of Federal Regulations is proposed to be amended as follows:

PART 255—RECOVERY OF OVERPAYMENTS

1. The authority citation for part 255 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231(i).

2. Section 255.8 is revised to read as follows:

§ 255.8 Recovery by adjustment in connection with subsequent payments.

(a) Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment becomes effective and the debt is considered recovered when, in the case of an individual paid by electronic funds transfer, the first annuity payment reflecting the annuity rate after actuarial adjustment is deposited to the account of the overpaid individual, or, in the case of an individual paid by check, the first annuity check reflecting the annuity rate after actuarial adjustment is negotiated.

Example. An annuitant agrees to recovery of a $5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The $5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the $5,000 would be considered fully recovered.

(b) In calculating any adjustment under this section, beginning with the first day of January after the tables and long-term or ultimate interest rate go into effect under section 15(g) of the Railroad Retirement Act (the triennial evaluation), the Board shall use those tables and long-term or ultimate interest rate.

Dated: February 4, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–3598 Filed 2–11–98; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AA94

Safety Standards for the Use of Roof-Bolting Machines in Underground Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: MSHA is extending the comment period on its advance notice of proposed rulemaking addressing the use of roof-bolting machines in underground mines.

DATES: Submit all comments on or before March 9, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

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

SUPPLEMENTARY INFORMATION: On December 9, 1997, MSHA published a notice in the **Federal Register** (62 FR 64789), requesting comments on the advance notice of proposed rulemaking (ANPRM) relating to Safety Standards for the Use of Roof Bolting Machines in underground mines. MSHA published the notice to afford an opportunity for interested persons to comment on the ANPRM and for commenters to provide additional information and data on machine design, operating procedures, and miners' experiences with roof-bolting machines.

The comment period was scheduled to close on February 9, 1998; however, in response to commenters' requests for additional time to prepare their comments, MSHA is extending the comment period until March 9, 1998. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the ANPRM. All interested parties are encouraged to submit their comments on or prior to March 9, 1998.

Dated: February 6, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–3563 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the regulations to establish the value for royalty purposes of oil produced from Indian leases and establish a new Minerals Management Service (MMS) form for collecting value and value differential data. These changes would decrease reliance on oil posted prices and use more publicly available information.

DATES: Comments must be submitted on or before April 13, 1998.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; or e:Mail David__Guzy@mms.gov. MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e:Mail David__Guzy@mms.gov, Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are David A. Hubbard of Royalty Management Program (RMP), Lakewood, Colorado, and Peter

Schaumberg of the Office of the Solicitor in Washington, D.C.

I. Introduction

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking about possible changes to the rules for royalty valuation of oil from Federal and Indian leases (60 FR 65610). The intent of the changes was to decrease reliance on oil posted prices and to develop valuation rules that better reflect market value. MMS requested comments regarding the possible changes.

MMS used various sources of information to develop the proposed rule. In addition to comments received on the Advance Notice of Proposed Rulemaking, MMS attended a number of presentations by crude oil brokers and refiners, commercial oil price reporting services, companies that market oil directly, and private consultants knowledgeable in crude oil marketing. MMS's deliberations were aided greatly by a wide range of expert advice and direct consultations MMS held with various Indian representatives.

The Department of the Interior's practice is to give the public an opportunity to participate in the rulemaking process. Anyone interested may send written comments, suggestions, or objections regarding this proposed rule to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov or contact David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385.

II. General Description of the Proposed Rule

MMS's existing regulations for valuing crude oil for royalty purposes are at 30 CFR part 206. Basically, the same regulations apply to Federal and Indian leases. These rules rely primarily on posted prices and prices under arm's-length sales to value oil. Recently, posted prices have become increasingly suspect as a fair measure of market value. As a result, for Federal lease production, MMS proposed new valuation rules that place substantial reliance on crude oil futures prices on the New York Mercantile Exchange (NYMEX). See 62 FR 3742 (Jan. 24, 1997). Because of the different terms of Indian leases, MMS is proposing separate rules for Indian oil valuation.

The proposed rulemaking would add more certainty to valuation of oil produced from Indian leases and eliminate any direct reliance on posted prices. Most Indian leases include a "major portion" provision, which says value is the highest price paid or offered at the time of production for the major portion of oil production from the same field. To lessen the current reliance on posted prices and to better accommodate the major portion provision, the proposed rule requires that royalty value be based on the highest of three different values: (1) A value based on NYMEX futures prices adjusted for location and quality differences; (2) the lessee's or its affiliate's gross proceeds adjusted for appropriate transportation costs; and (3) an MMS-calculated major portion value based on prices reported by lessees and purchasers in MMS-designated areas typically corresponding to reservation boundaries.

Because much Indian oil is disposed of under exchange agreements, specific guidance for applying the valuation criteria are included for these dispositions: (1) if the lessee or its affiliate disposes of production under an exchange agreement and then sells at arm's length the oil it receives in return, royalty value would be the resale price adjusted for appropriate quality differentials and transportation costs (unless the NYMEX or major portion values are higher); and (2) if the lessee or its affiliate disposes of production under an exchange agreement but refines rather than sells the oil it receives in return, royalty value would be the NYMEX value (unless the major portion value is higher).

The lessee would initially report royalties based on the higher of the NYMEX value or its gross proceeds. After MMS does its major portion calculation for the production month, explained below, the lessee would revise its initial royalty value if the major portion value were higher.

Adjustments for location and quality against the index values are limited to these components:

(1) A location and/or quality differential between the index pricing point (West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas, or Wyoming Sweet at Guernsey, Wyoming), calculated as the difference between the average monthly spot prices published in an MMS-approved publication for the respective locations; and either;

(2) A rate either published by MMS or contained in the lessee's arm's-length exchange agreement representing location and/or quality differentials between the market center and the boundary of the designated area (defined term—usually an Indian reservation); or

(3) Where oil flows to the market center, and as determined under the existing allowance rules, the actual transportation costs to the market center from the designated area.

Calculation of differentials could vary if the lessee takes its production directly to its own refinery and the movement in no way approximates movement to a market center.

MMS would calculate and publish the rate from the market center to the designated area based on specific information it would collect on a new form: Form MMS–4416, Indian Crude Oil Valuation Report. This form would also assist MMS in verifying data used to calculate major portion values. It is attached to this notice of proposed rulemaking as Appendix A. MMS requests commenters to provide comments on this form according to the information under the Paperwork Reduction Act in part IV, Procedural Matters, of this notice.

MMS will verify during the first 6 months after the effective date of this rule that the values determined by this rule are replicating actual market prices and satisfying Indian lease terms. Comments on how best to perform this analysis are also requested.

In the next section, we describe the major regulatory changes proposed in this rulemaking. The proposed changes for valuing production are substantive. But some sections, particularly those involving transportation allowances, remain mostly the same. Also, to clarify and simplify the rules, MMS is incorporating many changes that are not substantive but are an effort to implement concepts of *plain English.*

III. Section-by-Section Analysis

30 CFR Part 206

MMS proposes to amend part 206, Subpart B—Indian Oil as described below. Some of the provisions would be largely the same as in the existing rules, but would be rewritten for clarity.

Section 206.50 Purpose and Scope.

This section's contents would remain the same except for clarifications. MMS rewrote it in plain English to improve clarity.

Section 206.51 Definitions.

MMS would retain most of the definitions in § 206.51. Many of those retained were rewritten to reflect *plain English.* New definitions to support the revised valuation procedures are proposed for: *Designated area, Exchange agreement, Index pricing, Index pricing point, Location* *differential, Major portion, Market center, MMS-approved publication, NYMEX, Quality differential, Sale,* and *Settle price.* The definition of *Allowance* would be amended and captured under *Transportation allowance.* The definition of *Lessee* would be amended to include all of a company's affiliates, including its production, refining, and marketing arms. The term ''lessee'' could include multiple parties to a transaction involving oil sales from Indian leases. For example, it could include the lessee of record, the lessee of record's marketing affiliate, the operator, and the purchaser, if the purchaser were paying MMS royalties. Thus, when the term ''lessee'' is used in the proposed regulations and this preamble, it is used expansively and refers to all persons that are lessees under the proposed definition. For example, if the proposed regulations require the lessee to retain all data relevant to the determination of royalty value, this requirement would apply to the producer, the marketing arm and the purchaser, if the purchaser paid MMS royalties. We will discuss the new and amended definitions below where they appear in the regulatory text.

The proposed rule would remove the definitions of *Marketing affiliate, Net-back method, Oil shale, Posted price, Processing, Selling arrangement* and *Tar sands* because they no longer relate to how most crude oil is marketed or to the structure of the proposed rules. The definition of *Like-quality lease products* also would be revised under a new definition of *Like-quality oil* to support the new valuation publications. We will discuss this definition below where it appears in the regulatory text.

Section 206.52 How Does a Lessee Calculate Royalty Value for Oil?

This section would explain how you, as a *lessee,* a defined term, must calculate the value of oil production for royalty purposes. It is the principal valuation section of the proposed rules.

The current Indian oil valuation procedures rely heavily on posted prices and contract prices. Since many contracts use posted prices as a basis, the influence of posted prices is magnified. MMS is proposing a different valuation approach because market conditions have changed and because MMS believes the major portion provision of Indian leases needs to be better implemented. Moreover, the widespread use of exchange agreements and reciprocal sales, as well as the difficulties with relying on posted prices, suggests that many of these past pricing mechanisms are no longer accurate indicators of value in the marketplace. Given the mounting evidence that posted prices frequently do not reflect value in today's marketplace, the proposed valuation standards do not rely at all on postings. Furthermore, the prices referred to in exchange agreements and reciprocal sales may not represent market values. If two companies maintain a balance between purchases and sales, it is irrelevant to them whether the referenced price represents market value. So, after consulting various crude oil pricing experts and after considerable deliberation, MMS proposes to revise this section to value production from Indian leases at the highest of three values: NYMEX futures prices, gross proceeds, or a major portion value. These three methods would be outlined in a table for easy access. MMS proposes this multiple comparison largely because of concerns that current oil marketing practices may at least partially mask the actual value accruing to the lessee. Multiple sales and purchases between the same participants, while apparently at arm's length, may be suspect concerning the contractual price terms. A producer may have less incentive to capture full market value in its sales contracts if it knows it will have reciprocal dealings with the same participant where it, in turn, may be able to buy oil at less than market value. Several MMS consultants reinforced the notion that as long as the two parties maintain *relative* parity in value of oil production traded, the *absolute* contract price in any particular transaction has little meaning. This is particularly obvious in the case of exchange agreements.

Based on the information available to the lessee at the time it needs to value and pay royalties on production, the lessee would first determine whether its gross proceeds or a NYMEX-based index price would yield the higher value. As explained below, MMS would later determine and publish a major portion value. The lessee would then determine if the major portion value was higher than the value it initially reported and paid royalties on. If so, the lessee would owe additional monies. Paragraphs (a), (b), (c), and (d) explain this process. They replace most of existing paragraphs (a), (b), and (c).

Paragraphs (a)(1)–(5). The first of the comparative values would be the average of the five highest daily NYMEX futures settle prices at Cushing, Oklahoma, for the Domestic Sweet crude oil contract for the prompt month. *Settle price* would mean the price established by the New York Mercantile Exchange (NYMEX) Settlement Committee at the close of each trading session as the official price to be used in determining net gains or losses, margin requirements, and the next day's price limits. The prompt month would be the earliest month for which futures are traded on the first day of the month of production. For example, if the production month is April 1997, the prompt month would be May 1997, since that is the earliest, or nearest, month for which futures are traded on April 1.

Paragraphs (a)(2) and (3) would explain that the NYMEX price would have to be adjusted for applicable location and quality differentials, and could be adjusted for transportation costs as discussed below.

Paragraph (a)(4) would maintain that where the lessee disposes of production under an exchange agreement and the lessee refines rather than sells the oil received in return, the lessee would apply this paragraph (unless paragraph (c) results in a higher value). An *Exchange agreement* would be defined as an agreement by one person to deliver oil to another person at a specified location in exchange for reciprocal oil deliveries at another location. Such agreements may be made because each party has crude oil production closer to the other's refinery or transportation facilities than to its own, so each may gain locational advantages. Exchange agreements may or may not specify prices for the oil involved and frequently specify dollar amounts reflecting location, quality, or other differentials. Buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement, are considered exchange agreements. Transportation agreements are purely to accomplish transportation. They specify a location differential for moving oil from one point to the other, with redelivery to the first party at the second exchange point. They are not considered exchange agreements.

Paragraph (a)(5) would provide that MMS would monitor the NYMEX prices. If MMS determines that NYMEX prices are unavailable or no longer represent reasonable royalty value, MMS would, by rule, amend this paragraph to establish a substitute valuation method.

Attached Appendix B is an example of the NYMEX-based index pricing method. Assume that the production month is January 1997. The prompt month would then be February 1997, the prompt month in effect on January 1. In this instance, February 1997 oil futures are traded on the NYMEX from December 20, 1996, through January 21, 1997. The average of the five highest daily NYMEX futures settle prices for the February 1997 prompt month is $26.25 per bbl. This price would be adjusted for location/quality differentials and transportation (discussed later) to determine the proper oil value for January production.

MMS searched for indicators to best reflect current market prices and settled on NYMEX for several reasons. It represents the price for a widely-traded domestic crude oil (West Texas Intermediate at Cushing, Oklahoma), and there is little likelihood that any particular participant in NYMEX trading could impact the price. Also, NYMEX prices were regarded by many of the experts MMS consulted to be the best available measure of oil market value. As will be discussed in more detail below, the most difficult problem would be to make appropriate location and quality adjustments when comparing the NYMEX crude with the crude produced. Other indicators MMS considered included spot prices as tabulated by various publications and the *P-plus* market. The P-plus indicator shows premiums over posted prices to reflect oil market value on any given day. Spot prices offer the advantage that they are published for several different locations and might involve somewhat less difficult location and quality adjustments. MMS is proposing NYMEX prices primarily because they are perceived to best reflect current domestic crude oil market value on any given day and the minimal likelihood that any one party could influence them. Selection of the average of the five highest daily NYMEX settle prices for a given month is in keeping with a 75th percentile major portion calculation as discussed below for paragraph (c). MMS's proposal to use the five highest prices rather than a strict 75th percentile cutoff is purely for administrative simplicity. Because the number of business days in any given month may vary from 19 to 23, a strict application of the 75th percentile cutoff would lead to questions about whether four, five, or six daily prices should be included. Since 75 percent of the range from 19 to 23 is between 4.75 and 5.75, MMS suggests simply using the average of the five highest daily prices in the month.

MMS also considered timing of NYMEX application. Since the prompt month changes around the 21st of any given production month, two different prompt months exist during the production month. MMS decided to use the prompt month in effect on the first day of the production month. This would result in valuing the current month's production at the nearest month's futures price, but would reflect the market's assessment of value during the production month. The daily closing NYMEX prices are widely available in most major newspapers and various other publications.

MMS received comments on its proposed Federal oil rule (62 FR 3742, January 24, 1996) that we should use a one-month-earlier futures price, where the price would apply to deliveries in the production month but would be determined in an earlier time period. MMS specifically requests comments on the timing of the NYMEX application. MMS also requests comments on each of the following, and any other related issues you may want to address:

- Use of NYMEX as a market value indicator (index),
- Possible alternative market value indicators, and
- Use of the average of the five highest daily NYMEX settle prices as one of the comparison values.

MMS also received comments on its proposed rule for Federal oil valuation suggesting that the NYMEX may not be reflective value for the Rocky Mountain Region due to the isolated nature of that market. MMS requests comments on whether we should use a different valuation method for the Rocky Mountain Region.

Paragraphs (b)(1)–(4). The second of the comparative values would be the lessee's gross proceeds from the sale of its oil under an arm's-length contract. This value could be adjusted for appropriate transportation costs as discussed below. If the lessee disposes of production under an exchange agreement and the lessee then sells the oil received in return at arm's length, the value would be the lessee's resale price adjusted for appropriate quality differentials and transportation costs.

Paragraph (b)(3) would state that the lessee's reported royalty value is subject to monitoring, review, and audit by MMS. MMS may examine whether the lessee's oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the lessee. If it does not, then MMS may require the lessee to value the oil sold under that contract at the total consideration it received. MMS may require the lessee to certify that its arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

Paragraph (b)(4) would embody the provisions of current paragraph (j) and would require that value be based on the highest price the lessee can receive through legally enforceable claims under its contract. If the lessee fails to take proper or timely action to receive prices or benefits it is entitled to, the lessee must base value on that obtainable price or benefit. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable documented measures to force purchaser compliance, it would owe no additional royalties unless or until it receives monies or consideration resulting from the price increase or additional benefits. This paragraph would not permit the lessee to avoid its royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the lessee is entitled must be in writing and signed by all parties to the arm's-length contract.

Paragraph (c)(1)–(5). The third comparative value would be a major portion value MMS would calculate within 120 days of the end of each production month based on data reported by lessees and purchasers in the designated area for the production month. *Designated area* would mean an area specified by MMS for valuation and transportation cost/differential purposes, usually corresponding to an Indian reservation.

Paragraph (c)(2) would explain that each designated area would apply to all Indian leases in that area. MMS would publish in the **Federal Register** a list of the leases associated with each designated area. This paragraph would list the fifteen initial designated areas based generally on Indian reservations boundaries, plus any other areas MMS designates. This paragraph would also provide that MMS would publish any new area designations in the **Federal Register**. MMS also would publish in the **Federal Register** a list of all Indian leases that are in a designated area for purposes of these regulations.

Paragraph (c)(3) would describe how MMS would calculate the major portion value. MMS would use price and volume information submitted by lessees on Form MMS–2014, Report of Sales and Royalty Remittance. As explained previously, each price reported by lessees on Form MMS–2014 would be the highest of the gross proceeds on a NYMEX-based index price. MMS also would use information provided by buyers and sellers of production from the designated area on new Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. Form MMS–4416 reporting is discussed in more detail below. For each designated area, MMS would first adjust individual values for quality differences and appropriate transportation costs. Then MMS would array the reported values from highest to lowest. The major portion value would be that value at which 75 percent of the oil (by volume, starting from the lowest value) is bought or sold. Sales volumes would include those volumes taken in kind and resold by the Indian lessor.

The proposed major portion calculation would be a departure from the current regulation, where the major portion value is the value at which 50 percent plus 1 barrel of oil is sold, starting from the lowest price. MMS and Indian representatives had considerable deliberation on this issue. Indian lessors have criticized MMS since the publication of the definition of the major portion value in 1988. They have argued that the definition of the major portion in the 1988 regulation does not adequately represent the lease terms concerning the highest price paid or offered for a major portion of production. They argue that *median* is not synonymous with *major*. Thus, MMS is proposing to use the value at which 75 percent or more of the oil is sold, starting with the lowest value, as the definition of the term *major*.

Paragraph (d). This paragraph would explain how the lessee would report and pay royalties on the values determined under paragraphs (a), (b), and (c) above. It would explain that by the date the royalty payments are due, the lessee would be required to report, on Form MMS–2014, and pay the value of production at the higher of the values determined under paragraph (a) or (b). Once MMS completes its major portion calculations, MMS would inform the lessee of the major portion value for its applicable designated area. If this value exceeds the value the lessee initially reported for the production month, it would have to adjust the value to the higher major portion value by submitting an amended Form MMS–2014 within 30 days after it receives notice from MMS of the major portion value. MMS intends to monitor compliance with this requirement. MMS would specify, in the *MMS Oil and Gas Payor Handbook*, additional reporting requirements related to paragraphs (a), (b), and (c). This paragraph would also provide that the lessee would not accrue late-payment interest under 30 CFR 218.54 on any underpayment associated with a higher major portion value until the due date of its amended Form MMS–2014. MMS did not consider it equitable to assess interest for periods before MMS notifies the lessee of the major portion value.

MMS believes the major portion value at the 75th percentile from the bottom is a reasonable safeguard to assure that major portion provisions of Indian leases are satisfied. Thus, to build certainty into the lessee's royalty valuation, MMS also proposes in paragraph (d) that it could not change its major portion value once it issues notice of the value to lessees, except as may be required by an administrative or judicial decision. Such a decision may include an Interior Board of Land Appeals, District Court, or Circuit Court decision overturning MMS's calculation of the major portion price. A lessee or an Indian lessor could appeal the major portion value if it could demonstrate that MMS had not performed the calculation correctly.

MMS requests comments on the comparison of NYMEX prices, gross proceeds, and a major portion value as the proper method of valuing Indian crude oil for royalty purposes. Please also incorporate specific comments on the proposed major portion calculation procedure, particularly whether there is a more efficient and contemporaneous process for calculating and publishing the major portion price.

In addition to comments on the comparison between the three different price bases discussed above, MMS requests specific comments on alternative valuation techniques based on local market indicators. MMS believes that today's oil marketing is driven largely by the NYMEX market. But the location/quality adjustments needed to derive lease value using NYMEX would involve considerable administrative effort for all involved. MMS requests suggestions on ways to value Indian oil production based on market indicators in the vicinity of the lease, with the following in mind:

(1) The methods should not rely on posted prices unless they account for the difference between postings and market value.

(2) The methods must account for value differences related to quality and location.

(3) The methods must be widely applicable and flexible enough to apply to all Indian crude oil production.

(4) Most importantly, the methods must address the major portion provisions of Indian leases—the method must reflect ''the highest price paid or offered at the time of production for the major portion of oil production from the same field.''

MMS has considered that maximizing royalty revenues from Indian leases might affect the economics of mineral resource development. But MMS believes that specific royalty values should be independent of this concept and not effectively lowered as a result. Rather, this issue should be examined in the context of lease term adjustments by the Bureau of Indian Affairs and the Indian lessor. MMS requests specific comments on whether these proposed regulations would decrease leasing on Indian lands or otherwise affect the competitiveness of Indian leases.

Section 206.53 What Other General Responsibilities Do I have to Value the Oil?

This newly designated section would include several of the provisions of the existing rules, but rewritten and reordered for clarity. These provisions would replace part or all of current paragraphs (d), (e), (f), and (i), under existing § 206.52 and would state that:

(a) The lessee must make its oil sales and volume data available to authorized MMS, Indian, and other representatives on request. This would include any relevant data it has from fee and State leases. When the lessee entered into the lease, it expressly agreed that the Secretary will determine royalty value and that value may be calculated based on the price paid for the major portion of oil sold from the field where the leased lands are located. The lessee also agreed to provide all records necessary to determine royalty value. Finally, the lessee agreed to abide by and conform to the Secretary's regulations. The Secretary needs the lessee's records concerning its production from State and fee lands to determine value under the lease terms and regulations. Thus, MMS may require the lessee to submit records concerning the volume and value of non-Federal and non-Indian oil production;

(b) The lessee must retain all data relevant to royalty value determination according to recordkeeping requirements at 30 CFR 207.5. MMS or the lessor may review and audit the lessee's data, and may direct the lessee to use a different value if MMS determines the lessee's reported value is inconsistent with the requirements of this section;

(c) If MMS determines that the lessee has undervalued its production, the lessee must pay the difference plus interest under 30 CFR 218.54. If the lessee has a credit due, MMS will provide instructions for taking it; and

(d) The lessee must place the oil in marketable condition and market the oil for the mutual benefit of the lessee and lessor at no cost to the Indian lessor unless the lease agreement or this section provide otherwise. We would modify this paragraph to clarify that it includes a duty to market the oil. This is consistent with several Interior Board of Land Appeals decisions construing this duty. *See Walter Oil and Gas Corporation,* 111 IBLA 260 (1989).

Section 206.54 May I ask MMS for Valuation Guidance?

This new section would replace existing § 206.52(g) to explain that MMS will provide guidance to lessees in determining value. MMS points out that all value determinations are subject to later review and audit, and the lessee later could be required to pay based on a different value. If so, the lessee also could be liable for additional royalties and late payment interest for the period it used an improper value for the production.

Section 206.55 Does MMS Protect Information I Provide?

Newly designated § 206.55 would include the content of existing § 206.52(l), but would be rewritten for clarity. It would also state that MMS would protect information from disclosure to the extent allowed under applicable laws and regulations.

Deletion of existing § 206.52(e)(2) and (h)

MMS proposes to delete existing § 206.52(e)(2), which requires lessees to notify MMS if they determine value under existing § 206.52(c)(4) or (c)(5). Since MMS proposes to delete those paragraphs, paragraph (e)(2) no longer would apply.

MMS also proposes to delete § 206.52(h), which says royalty value will not be less than the lessee's gross proceeds, less applicable allowances. This clause would be redundant given that the lessee's gross proceeds already form one of the value bases proposed for comparison in § 206.52.

Section 206.57 Point of Royalty Settlement

This section would not be changed from existing § 206.53, but would be redesignated as § 206.57.

Section 206.60 What Transportation Allowances and Other Adjustments Apply to the Value of Oil?

Paragraph (a) Transportation Allowances

This paragraph would be similar in scope to § 206.54(a) of the present rule, but would apply only when the lessee values production based on gross proceeds (Section 206.52(b)) and under limited conditions when the lessee values production using NYMEX (Section 206.52(a)) as discussed below. Paragraph (a)(1) would use a table to outline when a lessee may claim a transportation allowance.

Transportation allowance would mean a deduction in determining royalty value for the reasonable, actual costs of moving oil from the designated area boundary to a point of sale or delivery off the designated area. The transportation allowance would not include gathering costs or costs of moving production from the lease to the designated area boundary. MMS's proposal not to allow transportation costs within Indian reservations would be based on consistent feedback from Indian lessors that such costs should not be permitted. They say that since their leases typically are silent on transportation costs, there is no specific provision permitting such deductions. But they acknowledge that costs to move production away from the reservation/designated area may be legitimate deductions.

Paragraph (a)(2) would explain that transportation allowances would not be permitted:

(i) if the oil is taken in kind and delivered in the designated area;

(ii) when the sale or title transfer point is within the designated area; or

(iii) when the lessee values production under the major portion provision at Section 206.52(c)—permissible transportation costs already would have been deducted before MMS performs this calculation.

MMS requests specific comments on permitting transportation allowances from the designated area rather than the lease.

Paragraph (b) Are There Limits on My Transportation Allowance?

Proposed paragraphs (b)(1) and (b)(2) would include the substance of existing § 206.54(b)(1) and (b)(2) respectively, but would be rewritten for clarity and to reflect plain English. Paragraph (b)(1) would also contain a table outlining the allowance limits. Paragraph (b)(1) would clarify that except as provided in paragraph (b)(2), the allowance deduction cannot be more than 50 percent of the oil value at the point of sale when valuing oil under gross proceeds. Under NYMEX valuation, the allowance would not be permitted to exceed 50 percent of the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the domestic Sweet crude oil contract for the prompt month.

Paragraph (c) Must I Allocate Transportation Costs?

Proposed paragraph (c) would be essentially the same as existing § 206.54(c). However, it would also point out that the lessee may not allocate costs to production for which those costs were not incurred.

Paragraph (d) What Other Adjustments Apply When I Value Production Based on Index Pricing?

Proposed new paragraph (d) would state that if the lessee values oil based on index pricing (NYMEX) under § 206.52(a), MMS would require certain location differentials associated with oil value differences between the designated area and the index pricing point outside the designated area. We discuss those differentials below under § 206.61(c). If the lessee produces oil in the designated area that includes Cushing, Oklahoma, it would only be entitled to a quality adjustment.

Paragraph (e) What Additional Payments May I Be Liable For?

Proposed paragraph (e) would contain similar requirements as existing § 206.54(d), but would be rewritten for clarity. Further, because adjustments would be made for location and quality differences, this paragraph would provide that the lessee would be liable for additional payments if those adjustments were incorrect.

Section 206.61 How do lessees determine transportation allowances and other adjustments?

Paragraph (a), dealing with arm's-length transportation contracts, would not be changed. However, MMS notes that lessees no longer are required to file Form MMS–4110, Oil Transportation Allowance Report, before claiming an arm's-length allowance on Federal leases. MMS requests specific comments on the benefits and drawbacks of continuing to require submission of Form MMS–4110 before lessees may claim an arm's-length transportation allowance on Indian leases.

Paragraph (b), dealing with non-arm's-length and no contract situations, would be changed by deleting paragraph (b)(5). The existing paragraph (b)(5) allows a lessee to apply for an exception from the requirement that it compute actual costs of transportation; a Federal Energy Regulatory Commission (FERC) approved tariff could be used instead.

MMS believes that the use of actual costs is fair to lessees and that use of a FERC-approved tariff overstates allowable costs in non-arm's-length situations. Also, just as for arm's-length contracts, MMS notes that lessees of Federal lands no longer are required to file Form MMS–4110 before claiming a non-arm's-length transportation allowance. MMS requests specific comments on whether lessees should still be required to submit Form MMS–4110 before claiming a non-arm's-length transportation allowance on Indian leases.

Paragraph (c) What adjustments apply when using index pricing? Proposed paragraph (c)(1) would describe adjustments the lessee must make to index prices where it values its oil based on index pricing under § 206.52(a). These adjustments and deductions would reflect the location/quality differentials and transportation costs associated with value differences between oil at the designated area boundary and the index pricing point outside the designated area. *Index pricing point* would be the physical location where a given price index—in this case NYMEX—is established. For NYMEX, that location is Cushing, Oklahoma. Although location differentials would reflect differences in value of oil at different locations, they are not transportation cost allowances. In fact, location differentials may increase a value rather than decrease it. Quality differentials would reflect differences in the value of oil due to different API gravities, sulfur content, etc. Location differentials generally also encompass quality differentials. Proposed paragraph (c)(1) would identify the specific adjustments and allowances that may apply to your production. The possible adjustments and allowances would be:

(i) A location differential to reflect the difference in value between crude oils at the index pricing point (West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas). *Market center* would be defined as a major destination point for crude oil sales, refining, or transshipment. As used here, market centers would be locations where trade publications provide crude oil spot price estimates. The market center that the lessee would use is the point where oil produced from its lease or unit ordinarily would flow towards if not disposed of at an earlier point.

For any given production month, the market center-index pricing point location/quality differential would be the difference between the average spot prices for the respective locations as published in an MMS-approved publication. *MMS-approved publication* would mean a publication MMS approves for determining NYMEX prices or location differentials (MMS-approved publications are discussed further below.) The purpose of this differential is to derive a NYMEX price at the market center by adjusting the NYMEX price at the index pricing point to the general quality of crude typically traded at the market center, and otherwise to reflect location/quality value differences at the appropriate market center.

Attached as Appendices C and D are examples of how the averages of the daily spot prices would be calculated for the index pricing point (Cushing, OK) and a selected market center (Midland, TX), respectively. The value difference between the two spot price averages would be the location differential between the index pricing point and the market center.

As an example, assume that *Platt's Oilgram* is an MMS-approved publication. For the February 1997 delivery month, spot sales prices are assessed from December 26, 1996, through January 24, 1997. The average of the daily (mean) spot price assessments for the month is utilized to calculate the location differential. In this instance, the average spot price for Cushing is $25.38 per bbl. and the average spot price for Midland is $25.20 per bbl. Since the Midland price is $.18 per bbl. lower than the Cushing price, the $.18 per bbl. would be deducted from the NYMEX-based price (or an addition would be made if the Midland price were higher than the Cushing price).

(ii) An express location/quality differential under the lessee's arm's-length exchange agreement that would include a clearly identifiable location/quality differential for the crude oil value difference between the market center and the designated area boundary.

In the cases that involve such agreements, the differential stated in the agreement should reflect actual value differences resulting from differences in location and quality between crude oils at the designated area boundary and the associated market center.

(iii) A location/quality differential that MMS would publish in the **Federal Register** annually that the lessee would use if it did not dispose of production under an arm's-length exchange agreement that contains an express differential as described above. MMS would stratify its calculated differentials so that specific quality differentials attributable to different grades of crude oil would be identified separately from location differentials. MMS would publish differentials for each designated area and an associated market center outside of the designated area. A designated area may be associated with more than one market center. As discussed in more detail below, MMS would periodically publish in the **Federal Register** a list of market centers associated with designated areas. The differential would represent crude oil value differences due to location and quality factors. MMS would acquire the information needed to calculate these specific differentials from exchange agreement data provided by lessees on a new reporting form (Form MMS–4416) discussed below. MMS would calculate the differentials using a volume-weighted average of the differentials derived from data reported on Form MMS–4416 for the previous reporting year. The differentials may reflect both a location differential based on the market center/designated area pairs and a quality differential based on the different types of crude oil exchanged. The lessee would apply the differential on a calendar production year basis. This means the lessee would apply it for the *reporting* months of February through the following January.

(iv) The lessee's actual transportation costs from the designated area boundary to the market center outside of the designated area as determined under § 206.61. MMS is not proposing to change the existing methods to calculate transportation allowances. The allowance would terminate at the market center as part of the total adjustment to derive an index-price-based value at the lease.

The purpose of these adjustments and allowances would be to reflect value differences for crude oil production of different qualities and at different locations to derive value at the designated area. The location differentials between the index pricing point and the market center, and between the market center and the designated area, would not necessarily reflect transportation alone. They would represent the overall market assessment of the different relative values of similar crude oil delivered at different locations. Only the actual transportation costs from the designated area to the market center would represent pure transportation costs.

MMS considered alternative index price adjustment methods ranging from using index values with no location adjustments to picking a specific percentage deduction from the index value to generically reflect location differentials. A variation of the latter would be to develop percentage or absolute dollar deductions for different geographical zones. In addition to specific comments on the proposed method of adjusting index values, MMS requests suggestions on alternative methods.

Proposed paragraph (c)(2) would specify which of the adjustments and allowances described above would apply to the lessee in various situations. This paragraph would include a table that would outline which adjustments under paragraph (c)(1) would apply. If the lessee disposed of its production under an arm's-length exchange agreement and the agreement had an express location/quality differential to reflect the difference in value between the designated area boundary for its lease and an associated market center outside of the designated area, then it would use two of the four possible adjustments and allowances. Specifically, it would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the designated area-market center differential specified in its exchange agreement under paragraph (c)(1)(ii).

Attached as Appendix E is an example of a NYMEX-based royalty computation for production from the Navajo reservation. The publications for calculating the NYMEX price and index pricing point-market center location differential have been discussed above and are illustrated at Appendices B, C, and D.

The deduction from the NYMEX-based price for the location/quality differential between the market center and designated area would be the actual exchange agreement differential or an MMS-published differential. (For purposes of this example, we used $.25 per bbl.)

If the lessee moved lease production directly to an MMS-identified market center outside of a designated area that is also the index pricing point (Cushing, Oklahoma), then it would use only two of the adjustments and allowances. The lessee would use the designated area-market center (index pricing point) quality differential under paragraph (c)(1)(iii) to determine the difference in value attributable to quality differences, and the actual transportation costs from the designated area boundary to the market center under paragraph (c)(1)(iv). For applying paragraph (c)(1)(iii), the lessee would use the quality differential published by MMS corresponding to oil similar to its production as compared to the quality of oil used for index pricing.

If the lessee did not move lease production from a designated area to an MMS-identified market center, but instead moved it directly to an alternate disposal point (for example, its own refinery), then it would use only two of the adjustments and allowances. The lessee would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the actual transportation costs from the designated area boundary to the alternate disposal point outside of the designated area under paragraph (c)(1)(iv). The market center for purposes of paragraph (c)(1)(i) is the MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to the lessee's. *Like-quality oil* would mean oil with similar chemical, physical, and legal characteristics. For example, West Texas Sour and Wyoming Sour would be like-quality, as would West Texas Intermediate and Light Louisiana Sweet. The market center for purposes of paragraph (c)(1)(iv) would be the alternate disposal point.

For example, a lessee producing sour crude from Indian leases in Wyoming might transport its oil directly to a refinery in Salt Lake City, Utah, without accessing any defined market center. In this case West Texas Sour crude at Midland, Texas, might represent the crude oil/market center combination most like and nearest to the oil produced. The market center-index pricing point location/quality differential under paragraph (c)(1)(i) would then be the difference in the spot price between West Texas Intermediate at Cushing, Oklahoma, and West Texas Sour at Midland, Texas as published in an MMS-approved publication. In addition to that adjustment, the lessee would be entitled to an allowance for the actual transportation costs from the designated area boundary in Wyoming to Salt Lake City (paragraph (c)(1)(iv), with Salt Lake City considered the market center for applying this deduction). MMS is proposing that this method is the best way to calculate the differences in value between the designated area and the index pricing point due to location, quality, and transportation when the production is not actually moved to a market center.

In all other situations, the lessee would use the market center-index pricing point location/quality differential (paragraph (c)(1)(i)) and the MMS-published designated area-market center location/quality differential under paragraph (c)(1)(iii). These adjustments would cover all location, quality, and transportation differences in value between the designated area and the index pricing point.

Proposed paragraph (c)(3) would state that if an MMS-calculated differential does not apply to a lessee's oil, due to either location or quality differences, the lessee must request in writing that MMS calculate a location/quality differential that would apply to its oil. Conditions for an exception would include:

(1) After MMS publishes its annual listing of location/quality differentials, the lessee must deliver to MMS its written request for an MMS-calculated differential;

(2) The lessee must provide evidence demonstrating why the published differential(s) does not adequately reflect its circumstances; and

(3) MMS will calculate a revised differential for the lessee when it receives the lessee's request or when it determines that the published differential does not apply to the lessee's oil. If additional royalties and interest are due, MMS then would bill for them. If the lessee filed a request for exception within 30 days after MMS publishes its annual listing of location/quality differentials, the MMS-calculated differential would apply as of the effective date of the published differentials. But if the request was received more than 30 days after MMS publishes its differential listing, the MMS-calculated differential would apply beginning the first day of the month following the date of the lessee's application for exception. In this case the published differentials would apply in the interim and MMS would not refund any overpayments made due to failure to timely request MMS to calculate a differential.

MMS would insert paragraph (c)(4) to note that it would periodically publish a list of MMS-approved publications in the **Federal Register**. This paragraph would also specify the criteria for acceptability. It would specify that the publications must:

(i) Be frequently used by buyers and sellers;

(ii) Be frequently mentioned in purchase or sales contracts;

(iii) Use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

(iv) Be independent from MMS, other lessors, and lessees.

Proposed paragraph (c)(5) would allow any publication to petition MMS to add them to the list of acceptable publications.

Proposed paragraph (c)(6) would state that MMS would reference the specific tables in individual publications that lessees must use to determine location differentials.

Proposed paragraph (c)(7) would explain that MMS would periodically publish in the **Federal Register** a list of market centers. MMS would monitor market activity and, if necessary, add or modify market centers. MMS would consider the following factors and conditions in specifying market centers:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;
(iii) Pipeline and other transportation linkage;
(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;
(v) Simplification; and
(vi) Other relevant matters.

MMS would initially consider the following as Market Centers:

Cushing, OK;
Empire, LA;
Guernsey, WY;
Midland, TX; and
St. James, LA.

Where Cushing, Oklahoma, is used as a market center, the index pricing point and market center would coincide. MMS requests specific comments on the initial list of market centers, including suggested additions, deletions and other modifications.

(d) Reporting requirements. MMS would redesignate existing paragraph (c) as (d) and revise redesignated paragraphs (d)(1)(i) and (d)(2)(i). Paragraph (d)(3) would otherwise remain the same, except that MMS would delete existing paragraph (c)(2)(viii) consistent with the previous change to delete the use of FERC- or State-approved tariffs. Redesignated paragraph (d)(4) would be modified to say that not only transportation allowances, but also location and quality differentials, must be reported as separate lines on Form MMS–2014 unless MMS approves a different procedure. MMS would provide additional royalty reporting details and requirements in the *MMS Oil and Gas Payor Handbook*.

(5) What Information Must a Lessee Provide To Support Index Pricing Deductions, and How Is It Used?

Proposed paragraph (d)(5) would be added to require lessees and all other purchasers of crude oil from Indian leases to submit a new form to MMS. We realize this may result in some duplicate information being filed by buyers and sellers, but MMS believes the buyer information will be very useful in confirming reported royalty values. Proposed Form MMS–4416, Indian Crude Oil Valuation Report, would capture value and location differential information from all exchange agreements or other contracts for disposal of oil from Indian lands. MMS would use these data to calculate location differentials between market centers and designated areas and to verify values reported on Form MMS–2014. MMS would publish annually in the **Federal Register** the location differentials for lessees to use in royalty reporting. MMS has included a copy of proposed Form MMS–4416 as Appendix A to these proposed regulations.

Information submitted on the new form would cover all of the lessee's crude oil production from Indian leases. All Indian lessees and all purchasers of oil from Indian lands would initially submit Form MMS–4416 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year. However, if October 31 of the year this regulation takes effect is less than 6 months after the effective date of this reporting requirement, the second submission of the Form MMS–4416 would not be required until October 31 of the succeeding year. In addition to the annual requirement to file this form, a new form would be required to be filed each time a new exchange or sales contract involving the production of oil from an Indian lease is executed. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement would not apply.

The reporting requirement would take effect before the effective date of the remainder of the rule. Early submittal of this information would allow MMS to publish the representative market center-designated area location differentials in the **Federal Register** by the effective date of the final regulation. Then MMS would publish location differentials by January 31 of all subsequent years. MMS would publish differentials for different qualities/grades of crude oil if the data are sufficient and if multiple differentials are appropriate for the area. Each year following the year this regulation became effective, lessees would use the new published differentials beginning with January production royalties reported in February.

MMS received many comments under its proposed Federal oil valuation rule on the administrative burden created by proposed Form MMS–4415. Therefore, MMS requests comments on how proposed Form MMS–4416 for Indian oil could be simplified, yet remain useful, in determining adjustments to the NYMEX-based price. Specifically, MMS requests comments on Form MMS–4416 (See Appendix A), including:

- Its layout and information requested;
- Frequency and timing of submittal;
- Frequency and timing of MMS's calculations and publication of differentials; and
- All other relevant comments.

Remainder of Section 206.55

MMS proposes no changes to existing paragraphs (d) and (e) except to redesignate them as paragraphs (e) and (f).

In addition to redesignating paragraph (f) as (g), MMS proposes to remove the reference to FERC- or State-approved tariffs to be consistent with the proposed deletion of paragraph 206.55(b)(5). MMS proposes no change to existing paragraph (g) except to redesignate it as paragraph (h).

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would amend regulations governing the valuation for royalty purposes of crude oil produced from Indian lands. These changes would modify the valuation methods in the existing regulations. Small entities are encouraged to comment on this proposed rule.

Approximately 125 payors pay royalties to MMS on oil production from Indian lands. The majority of these payors are considered small businesses under the criteria of the Small Business Administration (500 employees or less). MMS estimates this proposal will have an annual dollar impact of $368 per payor (Total Dollar Impact of $45,955÷125 Indian Royalty Payors). The estimated yearly industry compliance cost under this rule is $45,955. This amount is based on an annual burden of 1,313 hours for 125 payors X $35 (industry cost per hour).

Further, based on data obtained from the Small Business Administration (SBA), a small business on average has estimated receipts of $2,000,000. An annual cost impact of $368 for a small business to comply with this rule is not considered significant.

Approximately 125 payors report and pay royalties on oil production from Indian mineral leases. Of these 125 companies, most would be considered small entities under the SBA criteria. Since there are 15,838 small firms in the oil and gas industry in the United States, only about 1 percent (125÷15,838) are involved with MMS's business of reporting and paying royalty on oil produced from Indian lands. Accordingly, this rule will not affect a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2

U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under Executive Order 12866 Section 3(f)(4)c, which states: ''Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' The Office of Management and Budget has reviewed this rule under Executive Order 12866.

The Department's analysis of these proposed revisions to the oil valuation regulations indicates these changes will not have a significant economic effect as defined by Section 3(f)(1) of Executive Order 12866.

This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The MMS concludes that this proposed rule would result in an annual increase in Indian oil royalties of approximately $3.6 million. MMS and industry will realize administrative savings because of reduced complexity in royalty determination and payments and would introduce certainty into Indian royalty reporting.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@mms.gov.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The information collection is titled Indian Crude Oil Valuation Report. Part of the valuation of oil under this proposed rule relies on price indices that lessees may adjust for location differences between the index pricing point and the designated area. Lessees (and their affiliates as appropriate) on Indian lands, as well as purchasers of oil from these lands, would be required to give MMS information on the prices and location differentials included in their various oil exchange agreements and sales contracts. MMS would use these data to calculate and publish representative location differentials for lessees' use in reporting royalties in different areas. MMS would also use these data to verify royalty values reported on Form MMS–2014. This process would introduce certainty into royalty reporting.

Rules establishing the use of Form MMS–4416 to report oil values and location differentials are at proposed 30 CFR 206.55(d)(5). Information provided on the forms may be used by MMS auditors and the Royalty Valuation Division (RVD).

MMS estimates the annual reporting burden at 1,313 hours. There are approximately 125 oil royalty payors on Indian leases. These payors will have varying business relationships with one or more Indian tribes and/or allottees. MMS estimates that, on average, a payor will have six exchange agreements or sales contracts which enable the Indian oil royalty payor to either sell or refine the oil production from the Indian lease(s) for which they are making royalty payments. We estimate that a payor will fill out Form MMS–4416 in about one-half hour; we estimate the payor would have to submit the form twice a year because of contract changes in addition to the required annual filing discussed below (750 agreements/contracts × ½ hour × 2=750 burden hours).

In addition, MMS estimates that half of the exchange agreements or sales contracts would also be reported by non-payor purchasers of crude oil from Indian leases as required by 30 CFR 206.55(d)(5). Again, we estimate that the filing of Form MMS–4416 could take one-half hour per report to extract the data from individual exchange agreements and sales contracts; we also estimate that a non-payor purchaser would file a report twice a year for each agreement/contract (375 agreements/contracts × ½ hour × 2=375 burden hours).

To assure Indian lessors, tribes and allottees that all payors and non-payor purchasers are complying with these proposed Indian valuation regulations, we will require that Form MMS–4416 be submitted annually for all agreements/contracts to which payors and non-payor purchasers are parties, regardless of whether the agreements/contracts change or not. We estimate that this would require 10 minutes per report to indicate a no-change situation (750+375) agreements/contracts × ⅙ hour = 187.5 burden hours). Only a minimal recordkeeping burden would be imposed by this collection of information. Based on $35 per hour cost estimate, the annual industry cost is estimated to be $45,955 [(750+375+188) total burden hours × $35=$45,955].

In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. For instance your comments may address the following areas. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to amend 30 CFR part 206 as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 96a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 et seq;, 1001 et seq;, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

2. Section 206.53 is redesignated as § 206.57, § 206.54 is redesignated as § 206.60, and § 206.55 is redesignated as § 206.61.

3. Sections 206.50 through 206.52 are revised and new §§ 206.53 through 206.56 are added to read as follows:

§ 206.50 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). It explains how lessees (a defined term) must calculate the value of production for royalty purposes consistent with applicable laws and lease terms.

(b) A provision in this subpart does not apply if it is inconsistent with:

(1) A Federal statute;

(2) A treaty;

(3) A settlement agreement resulting from administrative or judicial litigation; or

(4) An express provision of an oil and gas lease subject to this subpart.

(c) MMS or Indian tribes may audit and adjust all royalty payments.

(d) This subpart is intended to ensure that the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing mineral leasing laws, treaties, and lease terms.

§ 206.51 Definitions.

The following definitions apply to this subpart:

Area means a geographic region at least as large as the limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent, nonaffiliated persons with opposing economic interests regarding that contract. Two persons are affiliated if one person controls, is controlled by, or is under common control with another person. Based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership over 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol. MMS may rebut this presumption if it demonstrates actual or legal control, as through interlocking directorates. MMS may require the lessee to certify the percentage of ownership or control. Aside from the percentage ownership criteria, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designated area means an area specified by MMS for valuation and transportation allowance/differential purposes, usually corresponding to an Indian reservation.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include ''buy/sell'' agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Exchange agreements do not include ''transportation'' agreements, whose principal purpose is transportation.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM approves for onshore leases.

Gross proceeds means the total monies and other consideration accruing to the lessee for the disposition of oil produced. Gross proceeds includes, but is not limited to, the examples discussed in this definition. Gross proceeds includes payments for services such as dehydration, measurement, and/or gathering which the lessee must perform at no cost to the Indian lessor. It also includes the value of services, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf. Gross proceeds also includes reimbursements for terminaling fees. Tax reimbursements are part of the gross proceeds even though the Indian royalty interest may be exempt from taxation. Monies and all other consideration a seller is contractually or legally entitled to, but does not seek to collect through reasonable efforts, are also part of gross proceeds.

Indian allottee means any Indian for whom the United States holds land or a land interest in trust or who holds title subject to Federal restriction against alienation.

Indian tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other Indian group for which the United States holds any land or land interest in trust or which is subject to Federal restriction against alienation.

Index pricing means using NYMEX futures prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law applicable to Indian lands that authorizes exploration for, development or extraction of, or removal of oil or gas products—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom an Indian Tribe or allottee issues a lease, and any person assigned an obligation to make royalty or other payments required by the lease. This includes any person holding a lease interest (including operating rights owners) as well as an operator, purchaser, or other person with no lease interest but who makes royalty payments to MMS or the lessor on the lessee's behalf. Lessee includes all affiliates, including but not limited to a company's production, marketing, and refining arms.

Like-quality oil means oil with similar chemical, physical, and legal characteristics.

Load oil means any oil used in the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Location differential means the value difference for oil at two different points.

Major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same designated area. It is calculated monthly using like-quality oil from the same designated area (or, if the corresponding field or area is larger than the designated area and if necessary to obtain a reasonable sample, from the same field or area).

Market center means a location MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS means the Minerals Management Service of the Department of the Interior.

MMS-approved publication means a publication MMS approves for determining NYMEX prices or location differentials.

Net profit share (for applicable Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

NYMEX means the New York Mercantile Exchange.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means the value difference between two oils due to differences in their API gravity, sulfur content, viscosity, metals content, and other quality factors.

Sale means a contract where:

(1) The seller unconditionally transfers title to the oil to the buyer. The seller may not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Settle price means the price established by NYMEX's Exchange Settlement Committee at the close of each trading session as the official price to be used in determining net gains or losses, margin requirements, and the next day's price limits.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil from the designated area boundary to a point of sale or delivery off the designated area. The transportation allowance does not include gathering costs or costs of moving production from the lease to the designated area boundary.

§ 206.52 How does a lessee determine the royalty value of the oil?

This section explains how you must determine the value of oil produced from Indian leases. For royalty purposes, the value of oil produced from leases subject to this subpart is the value calculated under this section with applicable adjustments determined under this subpart. The following table lists three oil valuation methods. You must determine the value of oil using the method that yields the highest value. As explained under paragraph (d) of this section, you must select from the first two methods and make an initial value calculation and payment based on the method that yields the highest value. MMS will calculate and publish the value under the third method. If the third method yields a higher value than the first two methods, you must adjust the value from your initial calculation as explained under paragraph (d) of this section.

Valuation method	Subject to
The average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.	Paragraphs (a) (1)–(5) of this section.
The gross proceeds from the sale of your oil under an arm's-length contract	Paragraphs (b) (1)–(4) of this section.
A major portion value that MMS calculates for each designated area within 120 days of the end of each production month.	Paragraphs (c) (1)–(4) of this section.

(a) You may calculate value using the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.

If you use this method, the provisions of this paragraph (a) apply.

(1) The prompt month is the earliest month for which futures are traded on the first day of the month of production. For example, if the production month is April 1997, the prompt month would be May 1997, since that is the earliest month for which futures are traded on April 1.

(2) You must adjust the index price for applicable location and quality differentials under § 206.61(c) of this subpart.

(3) If applicable, you may adjust the index price for transportation costs under § 206.61(c) of this subpart.

(4) If you dispose of oil under an exchange agreement and you refine rather than sell the oil that you receive in return, you must use this paragraph (a) to determine initial value.

(5) MMS will monitor the NYMEX prices. If MMS determines that NYMEX prices are unavailable or no longer represent reasonable royalty value, MMS will amend this section to establish a substitute valuation method.

(b) You may calculate value using the gross proceeds from the sale of your oil under an arm's-length contract. If you use this method, the provisions of this paragraph (b) apply.

(1) You may adjust the gross proceeds-based value calculated under this section for appropriate transportation costs under § 206.61(c) of this subpart.

(2) If you dispose of your oil under an exchange agreement and then sell the oil that you receive in return under an arm's-length contract, value is the sales price adjusted for appropriate quality differentials and transportation costs.

(3) MMS may monitor, review, or audit the royalty value that you report under this paragraph (b).

(i) MMS may examine whether your oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you. If it does not, then MMS may require you to value the oil sold under that contract at the total consideration you received.

(ii) MMS may require you to certify that the arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(4) You must base value on the highest price that you can receive through legally enforceable claims under your oil sales contract. If you fail to take proper or timely action to receive prices or benefits you are entitled to, you must base value on that obtainable price or benefit.

(i) In some cases you may apply timely for a price increase or benefit allowed under your oil sales contract, but the purchaser refuses your request. If this occurs, and you take reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until you receive monies or consideration resulting from the price increase or additional benefits. This paragraph (b)(4) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(ii) Any contract revisions or amendments that reduce prices or benefits to which you are entitled must be in writing and signed by all parties to your arm's-length contract.

(c) You may use a major portion value that MMS will calculate. If you use this method, the provisions of this paragraph apply.

(1) MMS will calculate and publish the major portion value for each designated area within 120 days of the end of each production month.

(2) Each designated area includes all Indian leases in that area. MMS will publish in the **Federal Register** a list of the leases in each designated area. The designated areas are:

(i) Alabama-Coushatta;
(ii) Blackfeet Reservation;
(iii) Crow Reservation;
(iv) Fort Belknap Reservation;
(v) Fort Peck Reservation;
(vi) Jicarilla Apache Reservation;
(vii) MMS-designated groups of counties in the State of Oklahoma;
(viii) Michigan Agency;
(ix) Navajo Reservation;
(x) Northern Cheyenne Reservation;
(xi) Southern Ute Reservation;
(xii) Turtle Mountain Reservation; (xiii) Ute Mountain Ute Reservation;
(xiv) Uintah and Ouray Reservation;
(xv) Wind River Reservation; and
(xvi) Any other area that MMS designates. MMS will publish any new area designations in the **Federal Register**.

(3) MMS will calculate the major portion value from information submitted for production from leases in the designated area on Form MMS–2014, Report of Sales and Royalty Remittance.

(i) MMS will use information from Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. See § 206.61(d)(5) of this subpart for further requirements related to Form MMS–4416.

(ii) MMS will arrange the reported values (adjusted for location and quality) from highest to lowest. The major portion value is the value of the 75th percentile (by volume, including volumes taken in kind) starting from the lowest value.

(4) MMS will not change the major portion value after it notifies you of that value for your leases, unless an administrative or judicial decision requires MMS to make a change.

(d) On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values determined under paragraphs (a) or (b) of this section, respectively. You must file this report and pay MMS by the date royalty payments are due for the lease. MMS will inform you of its calculated major portion value for the designated area. If this value exceeds the value you initially reported for the production month, you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value. MMS will specify, in the *MMS Oil and Gas Payor Handbook,* additional requirements for reporting under paragraphs (a), (b), or (c) of this section. You will not begin to accrue late-payment interest under 30 CFR 218.54 on any underpayment until the due date of your amended Form MMS–2014.

§ 206.53 What other general responsibilities do I have for valuing oil?

(a) On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas. This includes sales and volume data from fee and State leases within the designated area or from nearby fields or areas. You must make this data available to the authorized MMS or Indian representatives, the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information.

(b) You must retain all data relevant to the determination of royalty value. Recordkeeping requirements are found at 30 CFR 207.5. MMS or the lessor may review and audit such data you possess, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this section.

(c) If MMS determines that you have not properly determined value, you must:

(1) Pay the difference, if any, between the royalty payments you made and those that are due based upon the value MMS establishes;

(2) Pay interest on the difference computed under 30 CFR 218.54; and

(3) If you are entitled to a credit, MMS will tell you how to take that credit.

(d) You must place oil in marketable condition and market the oil for the mutual benefit of yourself and the lessor at no cost to the Indian lessor, unless the lease agreement or this part provides otherwise. In the process of marketing the oil or placing it in marketable condition, your gross proceeds may be reduced because services are performed on your behalf that normally would be your responsibility. If this happens, and if you valued the oil using gross proceeds under § 206.52(b), you must increase value to the extent that your gross proceeds are reduced.

§ 206.54 May I ask MMS for valuation guidance?

You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with the guidance you request.

§ 206.55 Does MMS protect information I provide?

MMS will keep confidential, to the extent allowed under applicable laws and regulations, any data you submit that is privileged, confidential, or otherwise exempt.

(a) Certain information you submit to MMS to support valuation proposals, including transportation allowances, is exempt from disclosure under Federal law.

(b) All requests for information about determinations made under this part must be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

(c) The Indian lessor has the right to obtain directly from you or MMS any information to which it may be lawfully entitled under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

4. Newly redesignated section 206.60 is revised to read as follows:

§ 206.60 What transportation allowances and other adjustments apply to the value of oil?

(a) *Transportation allowances.* (1) You may deduct a transportation allowance from the value of oil determined under § 206.52 of this part as explained in the following table.

If you value oil	And	Then
Based on index pricing under § 206.52(a).		You may claim a transportation allowance only under the limited circumstances listed at § 206.61(c)(2).
Based on gross proceeds under § 206.52(b).	The movement of the oil is not gathering.	MMS will allow a deduction for the reasonable, actual costs to transport oil from the designated area boundary to the sales point.

(i) See § 206.61(a) and (b) for information on how to determine the transportation allowance.

(ii) [Reserved]

(2) You may not deduct a transportation allowance for transporting oil:

(i) Taken as Royalty-In-Kind and delivered to the lessor in the designated area;

(ii) When the sale or transfer point occurs within the designated area; or

(iii) When you value oil based on a major portion value under § 206.52(c).

(b) *Are there limits on my transportation allowance?* (1) Except as provided in paragraph (b)(2) of this section:

If you determine the value of the oil based on	Then your transportation allowance deduction may not exceed
Index pricing under § 206.52(a)	50 percent of the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.
Gross proceeds under § 206.52(b)	50 percent of the value of the oil at the point of sale.

(2) If you ask, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (b)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(c) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in § 206.61 of this subpart. You may not allocate transportation costs from production for which those costs were incurred to production for which those costs were not incurred. You must express transportation allowances for oil as dollars per barrel.

(d) *What other adjustments apply when I value production based on index pricing?* If you value oil based on index pricing under § 206.52(a) of this subpart, you must adjust the value for the differences in location and quality between oil at the designated area boundary and the index pricing point outside the designated area as specified under § 206.61(c). If the oil is produced in the designated area that includes Cushing, Oklahoma, you are only entitled to a quality adjustment. See § 206.61 for more information on adjusting for location and quality differences.

(e) *What additional payments may I be liable for?* If MMS determines that you underpaid royalties because an excessive transportation allowance or other adjustment was claimed, then you must pay any additional royalties, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest if you understated the transportation allowance or other adjustment. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.61(e) of this subpart.

5. Newly redesignated § 206.61 is amended by revising the section heading; removing paragraphs (b)(5) and (c)(2)(viii); redesignating paragraphs (c) through (g) as paragraphs (d) through (h); adding new paragraphs (c) and (d)(5); and revising newly redesignated

paragraphs (d)(1)(i), (d)(2)(i), (d)(4) and (g) to read as follows:

§ 206.61 How do lessees determine transportation allowances and other adjustments?

* * * * *

(c) *What adjustments apply when lessees use index pricing?* (1) When you use index pricing to calculate the value of production under § 206.52(a), you must adjust the index price for location/quality differentials. Your adjustments must reflect the reasonable oil value differences in location and quality between the designated area boundary and the market center and between the market center and the index pricing point outside the designated area. The adjustments that might apply to your production are listed in paragraphs (c)(1)(i) through (iv) of this section. See paragraphs (c)(2) and(c)(3) of this section to determine which adjustments you must use based on how you dispose of your production. These adjustments are:

(i) A location differential to reflect the difference in value of crude oils at the index pricing point and the appropriate market center. For any production month, the location differential is the difference between the average spot prices for that month for the respective crude oils at the index pricing point and at the market center. Use MMS-approved publications to determine average spot prices and calculate the location differential;

(ii) An express location/quality differential under your arm's-length exchange agreement that reflects the difference in value of crude oil at the designated area boundary and the market center;

(iii) A location/quality differential reflecting the crude oil value difference between the designated area boundary and the market center that MMS will publish annually based on data it collects on Form MMS–4416. MMS will calculate that differential using a volume-weighted average of the differentials reported on Form MMS–4416 for the previous reporting year. MMS may publish separate rates for various crude oil qualities that are identified separately on Form MMS–4416 (for example, sweet vs. sour oil, or oil in different gravity ranges). MMS will publish differentials that reflect both a location differential based on the market center/designated area pairs and a quality differential based on the type of crude oil. MMS will publish these differentials in the **Federal Register** by the effective date of the final regulation and by January 31 of all subsequent years. You must use MMS-published rates on a calendar year basis—apply them to January through December production reported February through the following January; and

(iv) Actual transportation costs from the designated area boundary to the market center determined under this section.

(2) To determine which adjustments and transportation allowances apply to your production, use the following table.

If you	And	Then
Dispose of your production under an arm's-length exchange agreement.	That exchange agreement has an express location differential to reflect the difference in value between the designated area boundary for the lease and the associated market center.	Adjust your value using paragraphs (c)(1)(i) and (ii) of this section.
Move your production from a designated area directly to an MMS-identified market center.	The market center is also the index pricing point.	Use paragraph (c)(1)(iii) to determine the quality differential and paragraph (c)(1)(iv) to deduct the actual transportation costs to that market center, subject to this paragraph (c)(2)(i).
Do not move your production from a designated area to an MMS-identified market center.	You instead move it directly to an alternate disposal point (for example, your own refinery).	Adjust your value using paragraphs (c)(1)(i) and (iv) of this section, subject to this paragraph (c)(2)(ii).
Transport or dispose of your production under any other arrangement.		Adjust your value using paragraphs (c)(1)(i) and (iii).

(i) If you move your production from a designated area directly to an MMS-identified market center that is also the index pricing point, use the separate MMS-published quality differential between oil similar to yours and the oil used for index pricing for purposes of applying paragraph (c)(1)(iii). For purposes of paragraph (c)(1)(i) of this section, the market center is the MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to the oil being valued. The spot price you use must be for like-quality oil.

(ii) The market center for purposes of paragraph (c)(1)(iv) of this section is the alternate disposal point.

(3) If an MMS-calculated differential under paragraph (c)(1)(iii) of this section does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you.

(i) After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential.

(ii) You must demonstrate why the published differential does not adequately reflect your circumstances.

(iii) MMS will calculate such a differential when it receives your request or when it discovers that the differential published under paragraph (c)(1)(iii) of this section does not apply to your oil. MMS will bill you for any additional royalties and interest due. If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, the calculated differential will apply beginning with the effective date of the published differentials. Otherwise, the MMS-calculated differential will apply beginning the first day of the month following the date of your application. In this case the published differentials will apply in the interim and MMS will not refund any overpayments you made due to your failure to timely request MMS to calculate a differential for you.

(iv) Send your request to: Minerals Management Service, Royalty Management Program Royalty Valuation Division P.O. Box 25165, Mail Stop 3150 Denver, CO., 80225–0165.

(4) For the differentials referenced in paragraph (c)(1)(i) of this section, periodically MMS will publish in the **Federal Register** a list of MMS-approved publications. MMS's decision to approve a publication will be based on criteria which include but are not limited to:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently mentioned in purchase or sales contracts;

(iii) Publications which use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

(iv) Publications independent from MMS, other lessors, and lessees.

(5) Any publication may petition MMS to be added to the list of acceptable publications.

(6) MMS will specify the tables you must use in the publications to determine the associated location differentials.

(7) Periodically, MMS will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

(d) *Reporting requirements—(1) Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (d)(1)(v) and (d)(1)(vi) of this section, you must submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, before, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received.

* * * * *

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (d) (2) (v) and (d) (2) (vii) of this section, you must submit an initial Form MMS–4110 before, or at the same time as, you report the transportation allowance determined under a non-arm's-length contract or no-contract situation on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received. The initial report may be based upon estimated costs.

* * * * *

(4) *What additional requirements apply to Form MMS–2014 reporting?* You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014, unless MMS approves a different reporting procedure. MMS will provide additional reporting details and requirements in the *MMS Oil and Gas Payor Handbook*.

(5) *What information must lessees provide to support index pricing adjustments, and how is it used?* You must submit information on Form MMS–4416 related to all of your crude oil production from designated areas. You initially must submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year. In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas are likewise subject to the requirements of this paragraph (d)(5).

* * * * *

(g) *Actual or theoretical losses.* Notwithstanding any other provision of this subpart, for other than arm's-length contracts, no cost is allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

* * * * *

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A

BILLING CODE 4310–MR–P

Indian Crude Oil Valuation Report

1. Reporter Name:______________ Applies to Multiple leases □

Address: ______________ (attach list of leases)

City, State ______________ Zip _____ Designated Area ______________

Reporting Period ________19____ to ________19____ MMS PayorCode□□□□□

2. Contract Type and I.D.	□ Outright Purchase, □ Buy/Sell, □ Non-Cash Exchange, □ Sale subject to balancing □ Outright Sale **Contract Number** ______________ Multiple party exchange □

3. Other Contract Party Name ______________ Other Contract Party's MMS Payor Code (if available) □□□□□

4. Contract Term □No change from last filing	Effective Date: ___/___/___ (MM/DD/YY) Terms: □ month-to-month extensions, Initial Term: ________ (Months) □ fixed duration Expiration Date: ___/___/___ (MM/DD/YY)

	Oil You Sold or Transferred or Refined	**Oil You Received or purchased**
5. Title Transfer Location	□ MMS Lease Number □□□-□□□□□□-□ □ LACT meter number ________ □ Tank battery number ________ □ Market Center ________ □ Refinery Gate ________ □ Other ________ Cost of transporting to title transfer point (see instructions)___.____ $/bbl. Describe terms ________ ________ ________	□ MMS Lease Number □□□-□□□□□□-□ □ LACT meter number ________ □ Tank battery number ________ □ Market Center ________ □ Refinery Gate ________ □ Other ________ Cost of transporting to title transfer point (see instructions)___.____ $/bbl. Describe terms ________ ________ ________
6. Volume Terms	□ All Available (________ Est. B/D) □ Fixed (________ Fixed B/D)	□ All Available (________ Est. B/D) □ Fixed (________ Fixed B/D)
7. Pricing Terms	□ Posted Price Posting Company Name(s) ________ Poster=s Crude Type/Designation ________ Premium/Deduct to Posting: ________ $/BBL □ Index Price: Index used________ Source________ □ Calculated Price (Describe)________ ________ ________ □ Fixed Price: ______.______ $/BBL □ Other (Describe)________ ________ ________	□ Posted Price Posting Company Name(s) ________ Poster=s Crude Type/Designation ________ Premium/Deduct to Posting: ________ $/BBL □ Index Price: Index used________ Source________ □ Calculated Price (Describe)________ ________ ________ □ Fixed Price: ______.______ $/BBL □ Other (Describe)________ ________ ________
8. Crude Oil Quality and Adjustments	API Gravity: __.__ API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: □ No Deductions □ Deemed ______ API, ______ $/BBL □ Actual ______ API, ______ $/BBL Other Quality Adjustments: □ More than one Description:________ (□ Deemed or □ Actual) Adjustments: ____.___$/BBL	API Gravity: __.__ API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: □ No Deductions □ Deemed ______ API, ______ $/BBL □ Actual ______ API, ______ $/BBL Other Quality Adjustments: □ More than one Description:________ (□ Deemed or □ Actual) Adjustments: ____.___$/BBL

Have you received or paid any other consideration, in any form, for the sale, purchase, or exchange of this crude oil, either at this location or at any other location? (□ Yes, or □ No) If Yes, Explain: ______________

Authorized Signature______________ and Date______________

Form MMS-4416

Step-by-Step Instructions for MMS Form 4416

This form is designed to collect valuation and location/quality differential information about oil produced from Indian leases to determine its market value. You should fill out this form if you produce, sell, purchase, exchange, or refine oil produced from Indian lands. A separate form should be used for each contract. If a contract refers to more than one lease, one form may be filled out provided a list of leases it covers is attached to it.

1. **Company (Reporter) Information**

Fill out your company name, address, and zip code. Indicate whether the contract you are reporting on applies to more than one lease by placing a check in the box in the upper right corner of this section. If more than one form is needed to provide the required information (e.g. multiple party exchange agreement) the address may be omitted from subsequent forms provided that the cover form containing address is attached.

-Write in the reporting period this form covers.

-Write in the name of the Reservation(s) where the oil production on this form applies.

-Write in your five-digit MMS payor code on each form submitted (if your company does not have a payor code MMS will assign one to you).

2. **Contract Type:** Check the appropriate box *(or boxes if more than one applies)* to indicate the contract type. [**Outright Purchases** *are made at arm's-length and no additional consideration is paid (in this transaction or in any other transaction).* **Buy/Sell** *is an exchange where monetary value is assigned to settle both transactions in the exchange.* **Non-Cash Exchange** *is a transaction where no monetary value is assigned to either transaction in the exchange; instead, a dollar amount is usually assigned to the difference between the two values.* **Sales Subject to Balancing** *are transactions tied to an overall exchange agreement (either expressed or implied) where volumes purchased and sold by each party are in balance.* **Outright Sales** *are made at arm's length and no additional consideration is received (in this transaction or in any other transaction).* If this oil transaction is part of a multiple party (three or more) exchange agreement, check the box to the left of the contract number titled **Multiple party exchange**. Also fill in the **Contract Number** -- use the I.D. that would allow a third party to clearly identify the document.

3. **Other Contract Party Name:** Write the name of the other party to the contract involving the Indian oil. If that party has an MMS payor code, write it in the space provided (if known). If the transaction is part of a multiple party exchange, attach a list of the other parties involved in the exchange (write their MMS payor code, if known, next to each party's name).

4. **Contract Term:** *(Note: if you are filing this contract under the annual Oct. 31 reporting requirement and none of the required entries in steps 4 - 8 have changed from the last report (filed in the last 12 months), check the box in the lower left corner of section 4. If no change has occurred except to extend the expiration date of the contract, check the box in the lower left corner of section 4 and fill in the new expiration date in this section. Make sure that an authorized representative signs and dates the form. Otherwise complete the form as instructed below).* Fill in the date the contract started, and the initial term in months. Check the contract term that applies to this contract. If the contract is of fixed duration, fill in the expiration date in the space provided.

Items 5-8

The information on the rest of the form is divided into two columns. The left column should be used to record information about oil you produced *and* either sold, transferred in an exchange or buy/sell, or refined. The right column should be used for oil that you purchased or you received in an exchange or buy/sell *(i.e., you will use both columns for oil that is part of an exchange agreement, part of a buy/sell, or part of a sale subject to balancing; you will use one column for oil you produced and refined, produced and sold outright or purchased outright).*

5. **Title Transfer Location:** Check the appropriate box to indicate where title transfer occurred for oil you sold or transferred and/or where you took title to oil you purchased or received under an exchange. Where title transferred at the Indian or federal lease, write in the 10-digit MMS lease number. Enter the location where title transferred *(if the title transfer involves production from more than one Indian lease, provide the list of the leases contributing to the production or if the transaction involves the production stored in a tank battery, the tank battery number will be adequate).*

In the space provided, fill in the cost in $/barrel of transporting oil you produced from the production location to the point where title transfers *(do not include the cost of gathering or the cost of transporting oil within the boundaries of an Indian reservation).* If the contract so specifies (or this information is known to you) fill in transportation costs for oil you received or sold. Describe the terms (i.e. starting location, ending location) involved in the transportation of the oil. Use MMS designated areas (as defined in the Indian oil valuation regulations), MMS aggregation points (as defined in the Federal oil valuation regulations) or State/ Section/Township/Range. Where oil traverses more than one MMS aggregation point be sure to include all segments of the transportation route. Attach a separate sheet, if needed, to adequately describe the transportation.

Step-by-Step Instructions for MMS Form 4416

6. **Volume Terms:** If your contract states that all available oil will be purchased, check the "all available box and write in the estimated barrels per day of oil (Disposed/received). Otherwise, check the "fixed" box and write in the fixed volume (disposed/received) specified in the contract.

7. **Pricing Terms:** There are four pricing designations -

Posted Price: If the contract references a posted price, write in the name(s) of the company or companies posting(s) and the crude oil referenced in the posting(s). List any premium(+) or deduction (-) to the referenced price(s).

Index Price: If an index price is used, check the box marked index price. Identify the index price used and the source publication(s) in the space provided. Write the details of how the index price is calculated in the space provided under *calculated price* below.

Calculated Price: If the contract uses a formula to determine price, completely describe the method used. Attach an additional sheet if necessary.

Fixed Price: If the price is set through the duration of the contract, list the price per barrel.

Other: Fully describe the method used if it is not covered under any of the above pricing provisions. Attach an additional sheet if necessary.

8. **Crude Oil Quality and Adjustments:**

Quality Measures:

Fill in the **API Gravity** of oil disposed and/or received to the nearest tenth of a degree. Fill in the **Sulfur Content** of the oil you disposed and/or received to the nearest tenth of a percent. Fill in the **Paraffin content** of the oil you disposed and/or received to the nearest tenth of a percent.

Adjustments:

API Gravity: Check the appropriate box. If the gravity is deemed, write the deemed API gravity to the nearest tenth of a degree and any corresponding price adjustment from the contract. If an actual reference gravity is used to make an adjustment, write the gravity to the nearest tenth of a degree and the corresponding price adjustment from the contract.

Other Quality Adjustment(s): If only one other quality adjustment is made, use the space provided in this section to describe the quality adjustment, indicate whether the measure is actual or deemed, and the dollar per barrel adjustment for the quality measure. If your contract contains more than one other quality adjustment, check the box and attach a separate sheet to fully describe the quality adjustments. Indicate the type of adjustment and whether the quality measured is actual or deemed. Also, provide the adjustment amount in dollars per barrel for each adjustment made.

Authorized Signature: If the form has not captured all compensation provided in connection with the crude oil reported on this form, check the yes box and provide an explanation in the space provided. If the form accurately reports all the compensation you received or paid for oil reported on this form, check no. An individual authorized to represent the party to the contract you are summarizing must sign the form. Write the date the form was completed in the space provided.

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APPENDIX B—NYMEX INDEX PRICE BASIS

[January 1997 Production and Sale]

NYMEX trade date	NYMEX Delivery (prompt) month	NYMEX daily	Close
Jan–08–97	Feb. 1997	$26.62	
Jan–06–97	Feb. 1997	26.37	
Jan–07–97	Feb. 1997	26.23	
Jan–10–97	Feb. 1997	26.09	
Jan–15–97	Feb. 1997	25.95	
Dec–31–97	Feb. 1997	25.92	
Jan–02–97	Feb. 1997	25.69	
Jan–09–97	Feb. 1997	25.69	
Jan–03–97	Feb. 1997	25.59	
Jan–16–97	Feb. 1997	25.52	
Jan–17–97	Feb. 1997	25.41	
Dec–30–97	Feb. 1997	25.37	
Jan–20–97	Feb. 1997	25.23	
Dec–27–97	Feb. 1997	25.22	
Jan–13–97	Feb. 1997	25.19	
Jan–14–97	Feb. 1997	25.11	
Dec–24–97	Feb. 1997	25.10	
Dec–20–97	Feb. 1997	25.08	
Dec–26–97	Feb. 1997	24.92	
Jan–21–97	Feb. 1997	24.80	
Dec–23–97	Feb. 1997	24.79	
NYMEX Average Price for five high daily settle prices for January 1997 production.		26.25	

APPENDIX C—WTI SPOT PRICE, MARKET CENTER: CUSHING, OK

[January 1997 Production and Sale]

Cushing WTI spot trade date	Cushing WTI spot delivery assess. month	Final cushing WTI spot	(Mean)
Dec–26–96	Feb. 1997	$24.88	
Dec–27–96	Feb. 1997	25.09	
Dec–30–96	Feb. 1997	25.23	
Dec–31–96	Feb. 1997	25.78	
Jan–02–97	Feb. 1997	25.80	
Jan–03–97	Feb. 1997	25.59	
Jan–06–97	Feb. 1997	26.34	
Jan–07–97	Feb. 1997	26.28	
Jan–08–97	Feb. 1997	26.53	
Jan–09–97	Feb. 1997	26.30	
Jan–10–97	Feb. 1997	26.18	
Jan–13–97	Feb. 1997	25.16	
Jan–14–97	Feb. 1997	25.11	
Jan–15–97	Feb. 1997	25.88	
Jan–16–97	Feb. 1997	25.41	
Jan–17–97	Feb. 1997	25.28	
Jan–20–97	Feb. 1997	25.14	
Jan–21–97	Feb. 1997	24.57	
Jan–22–97	Feb. 1997	24.32	
Jan–23–97	Feb. 1997	23.97	
Jan–24–97	Feb. 1997	24.05	
Cushing WTI Avg Spot Price for January 1997		25.38	

APPENDIX D—WTI SPOT PRICE, MARKET CENTER: MIDLAND, TX

[January 1997 Production and Sale]

Midland WTI spot trade date	Midland WTI spot delivery assess. month	Final Midland WTI spot	(Mean)
Dec–26–96	Feb. 1997	$24.88	
Dec–27–96	Feb. 1997	25.08	
Dec–30–96	Feb. 1997	25.08	
Dec–31–96	Feb. 1997	25.77	
Jan–02–97	Feb. 1997	25.80	
Jan–03–97	Feb. 1997	25.58	
Jan–06–97	Feb. 1997	26.33	

APPENDIX D—WTI SPOT PRICE, MARKET CENTER: MIDLAND, TX—Continued

[January 1997 Production and Sale]

Midland WTI spot trade date	Midland WTI spot delivery assess. month	Final Midland WTI spot	(Mean)
Jan–07–97	Feb. 1997	26.24	
Jan–08–97	Feb. 1997	26.48	
Jan–09–97	Feb. 1997	26.18	
Jan–10–97	Feb. 1997	26.02	
Jan–13–97	Feb. 1997	24.99	
Jan–14–97	Feb. 1997	24.88	
Jan–15–97	Feb. 1997	25.65	
Jan–16–97	Feb. 1997	25.10	
Jan–17–97	Feb. 1997	24.94	
Jan–20–97	Feb. 1997	24.80	
Jan–21–97	Feb. 1997	24.19	
Jan–22–97	Feb. 1997	23.88	
Jan–23–97	Feb. 1997	23.58	
Jan–24–97	Feb. 1997	23.66	
WTI Midland Avg Spot Price for January 1997		25.20	

APPENDIX E—NYMEX-BASED OIL ROYALTY COMPUTATION, NAVAJO NATION, MARKET CENTER: MIDLAND, TX

[January 1997 Production and Sale]

Average of Five High Daily NYMEX Settle Prices		$26.25
Cushing/Market Center Location Differential:		
WTI Cushing Average Spot Price	$25.38	
WTI Midland Average Spot Price	25.20	
WTI Midland over (under) WTI Cushing		(.18)
Market Center/Designated Area Location and Quality Differential (Exchange Agreement):		
Transportation and Quality Differential from Midland to Navajo reservation		(.25)
Royalty Value per barrel		25.82

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5966–5]

Clean Air Act Withdrawal of Proposed Approval of Amendment to Title V Operating Permits Program and Proposed Approval of Amendments to Title V Operating Permits Program; Pima County Department of Environmental Quality, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule; proposed rule.

SUMMARY: The EPA withdraws its proposed approval (62 FR 16124, April 4, 1997) of revisions to the Pima County Department of Environmental Quality (''Pima'' or ''County'') title V operating permits program. In this document EPA also proposes approval of the following revisions to the operating permits program submitted by the Arizona Department of Environmental Quality (''DEQ'') on behalf of Pima: a revision to the fee provisions; and a revision that will defer the requirement for minor sources subject to standards under sections 111 or 112 of the Act to obtain title V permits, unless such sources are in a source category required by EPA to obtain title V permits.

DATES: Comments on this proposed action must be received in writing by March 16, 1998. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of Pima's submittals and other supporting information used in developing this proposed approval are available for inspection (AZ–Pima–97–1–OPS and AZ-Pima-97–2–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street; San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415–744–1252), Mail Code AIR–3, U.S. Environmental Protection Agency, 75 Hawthorne Street; San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (57 FR 32250; July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires states to develop and submit to EPA, by November 15, 1993, programs for issuing these operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act, which outlines criteria for approval or disapproval.

On November 15, 1993, Pima's title V program was submitted. EPA proposed interim approval of the program on July 13, 1995 (60 FR 36083). The fee provisions of the program were found to be fully approvable. On November 14, 1995, in response to changes in state law, Pima amended its fee provisions under Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code. Those changes were submitted to