DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144620–04]

RIN 1545–BD70

Partner's Distributive Share; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that provides rules for testing the substantiality of an allocation under section 704(b) where the partners are look-through entities or members of a consolidated group.

DATES: The public hearing originally scheduled for February 15, 2006, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, November 18, 2005 (70 FR 69919) announced that a public hearing was scheduled for February, 15, 2006, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 704(b) of the Internal Revenue Code. The public comment period for these regulations expired on January 25, 2006.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, February 7, 2006, no one has requested to speak. Therefore, the public hearing scheduled for February 15, 2006, is cancelled.

LaNita VanDyke,

Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–1926 Filed 2–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD00

Indian Oil Valuation

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations regarding valuation, for royalty purposes, of oil produced from Indian leases. This proposal intends to add certainty to Indian oil valuation, eliminate reliance on posted oil prices, and address unique terms of Indian leases.

DATES: Comments must be submitted on or before April 14, 2006.

ADDRESSES: *Proposed Rule Comments:* Submit your comments, suggestions, or objections regarding the proposed rule by any of the following methods:

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225;

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-mail. mrm.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: RIN 1010–AD00'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

Information Collection Request (ICR) Comments: Submit written comments by either fax (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior [OMB Control Numbers ICR 1010–0140 (expires October 31, 2006) and ICR 1010–0103 (expires April 30, 2006), as they relate to the proposed Indian oil valuation rule].

Also submit copies of written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

The OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov*. The principal authors of this proposed rule are John Barder, Theresa Walsh Bayani, and Kenneth R. Vogel of the Minerals Revenue Management, MMS, Department of the Interior, and Geoffrey Heath of the Office of the Solicitor, Department of the Interior, in Washington, D.C.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1998, the MMS published a notice in the **Federal Register** (63 FR 7089) (February 1998 proposal) of proposed rulemaking applicable exclusively to the valuation of oil produced from Indian leases. The February 1998 proposal proposed to value oil based on the highest of (1) New York Mercantile Exchange (NYMEX) prices, adjusted for location and quality; (2) the lessee's or its affiliate's gross proceeds; or (3) an MMS-calculated ''major portion'' value. The MMS proposed further changes to the February 1998 proposal in a supplementary proposed rule published on January 5, 2000 (65 FR 403) (January 2000 proposal). Among other things, the January 2000 proposal proposed to replace using NYMEX futures prices with spot prices, including using the average of the high daily spot prices, rather than the average of the five highest NYMEX settle prices in a given month. The MMS received extensive

comments on both the February 1998 and January 2000 proposals.

The MMS published a notice in the **Federal Register** on February 22, 2005 (70 FR 8556) withdrawing the February 1998 and January 2000 proposals. The MMS explained that it was beginning a new process of developing a proposed rule to value oil produced from Indian leases for royalty purposes. In the same notice, MMS scheduled public meetings in three different locations to consult with Indian tribes and individual Indian mineral owners and to obtain information from interested parties. The public meetings were held on March 8, 2005, in Oklahoma City, Oklahoma; on March 9, 2005, in Albuquerque, New Mexico; and on March 16, 2005, in Billings, Montana. The MMS has posted summaries of the discussions at the meetings on its Web site at *www.mrm.mms.gov/Laws_R_D/FRNotices/AD00.htm*. In June 2005, MMS conducted five additional consultation meetings with tribes and with individual Indian mineral owners regarding this proposed rulemaking.

The intent of this proposed rulemaking is to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address the unique terms of Indian (tribal and allotted) leases—specifically, the major portion provision. Most Indian leases include a major portion provision, stating that value for royalty purposes may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered at the time of production for the major portion of oil produced from the same field.

II. General Valuation Approach of the Proposed Rule (Proposed 30 CFR §§ 206.52 and 206.53)

Establishing proper values, for royalty purposes, of oil produced from Indian leases begins with an understanding of where the oil is produced and how it is marketed. The areas of oil production on tribal reservations and allotted lands are the following:

1. The San Juan Basin in southeastern Utah, northwestern New Mexico, and southwestern Colorado (including Navajo tribal, Navajo allotted, Ute Mountain Ute tribal, Southern Ute tribal, Southern Ute allotted, and Jicarilla Apache tribal leases). This area accounted for 36 percent of the oil sold from all Indian leases in 2004 (down from 42.75 percent in 2003).

2. Northeastern Utah (Ute tribal and allotted leases). This area accounted for 25 percent of the oil sold from all Indian leases in 2004 (up from 15.32 percent in 2003).

3. Wyoming (Shoshone and Arapaho tribal and allotted leases). This area accounted for 21.54 percent of the oil sold from all Indian leases in 2004 (down from 22.53 percent in 2003).

4. Oklahoma (mostly allotted leases with a few leases distributed among several tribes). This area accounted for 9.98 percent of the oil sold from all Indian leases in 2004 (down from 10.89 percent in 2003).

5. Western and central Montana (Blackfeet tribal and allotted and Crow tribal and allotted leases) and the Williston Basin area in eastern Montana and western North Dakota (Ft. Peck Assiniboine and Sioux tribal and allotted and Ft. Berthold Arikara, Mandan, and Hidatsa tribal and allotted leases). Together, these areas accounted for 6.14 percent of the oil sold from all Indian leases in 2004 (down from 6.80 percent in 2003).

6. Texas (Alabama-Coushatta tribal leases). This area accounted for 1.31 percent of the oil sold from all Indian leases in 2004 (down from 1.68 percent in 2003).

7. Two other leases (one in northern North Dakota and one in Michigan) accounted for the remaining 0.03 percent of the oil sold from Indian leases in 2003 and 2004.

This overview reveals a stark contrast with the composition of Federal leases that produce oil. First, the vast majority of oil produced from Federal leases comes from the Gulf of Mexico Outer Continental Shelf. Second, there are numerous onshore Federal leases in California and Alaska (where there are no Indian leases covered by this proposed rule). Federal leases in the Western United States also far outnumber Indian leases there. These factors result in major differences in the marketing of oil produced from Federal and Indian leases.

According to our analysis and experience, almost all oil sold from Indian leases (more than 98 percent in 2003 and more than 97 percent in 2004) is sold or exchanged at arm's length before it is refined. Included in that percentage are volumes taken by one tribal lessor as royalty in kind (RIK). It appears that only one payor (who is a lessee in one of the producing areas) currently transports oil produced from Indian leases to its own refinery. The oil sold by that payor constituted 1.69 percent of oil sold from all Indian leases in 2003 and 2.02 percent in 2004. There is only one producing area in which significant volumes (reported by one producer) are initially transferred to an affiliate before being resold at arm's length. There are other occasional non-arm's-length transfers, but they involve only a few payors and insignificant volumes.

Further, the vast majority of the oil sold at arm's length appears to be sold at the lease. As discussed below, MMS records indicate that only two payors claimed transportation allowances for oil produced from Indian leases in 2004. Only one payor has claimed transportation allowances thus far in 2005.

Further, except for the possibility of some oil sold in Oklahoma (which, as explained above, accounts for only about 10 percent of the oil sold from Indian leases), oil sold from Indian leases apparently does not flow to (and is not exchanged to) Cushing, Oklahoma, where NYMEX prices are published. Thus, with the exception of Oklahoma (and possibly one type of oil produced in Wyoming), it is extremely difficult to obtain reliable location and quality differentials between Cushing and areas where the large majority of the oil is produced from Indian leases, including the San Juan Basin, northeastern Utah, Wyoming (for other oil types), and Montana. Even in Oklahoma, more than 97 percent of the oil sold from Indian leases in 2004 was reported to MMS as sold at arm's length.

This contrasts sharply with the marketing and disposition of oil produced from Federal leases. Much of the oil produced from Federal leases that is ultimately sold at arm's length, whether without or after a transfer to an affiliate, is transported before the arm's-length sale. Additionally, a substantial share of the oil produced from Federal leases, particularly oil produced offshore in the Gulf of Mexico, is exchanged to Cushing or flows to market centers that have well-established differentials between the market center and Cushing.

Consequently, MMS is not proposing to use either NYMEX or spot market index pricing as primary measures of value for oil produced from Indian leases. Because of the environment in which Indian oil is produced and marketed, MMS proposes to value oil at the gross proceeds the lessee or its affiliate receives in an arm's-length sale. In the rare circumstance that the sale occurs away from the lease, the proposed rule would provide for appropriate transportation allowances discussed further below (see paragraphs (a) through (d) of proposed § 206.52). This valuation principle would apply to almost all the oil produced from Indian leases on which royalty is paid in value.

The MMS also proposes to specify in § 206.52(b) that, if a lessee sells oil produced from a lease under multiple arm's-length contracts instead of just

one contract, the value of the oil is the volume-weighted average of the total consideration established under § 206.52 for all contracts for the sale of oil produced from that lease. In the Federal Oil Valuation Rule, published on March 15, 2000 (65 FR 14022) (2000 Federal Oil Rule), the regulations at 30 CFR 206.102(b) provide that, if a lessee has multiple arm's-length contracts for the sale of oil produced from a lease, the value of the oil is ''the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.'' The volume-weighted average is the sum of the unit values of each contract multiplied by the volume sold under each contract divided by the total volume. The phraseology in § 206.52(b) of this proposed rule clarifies that the volume-weighted average is calculated on the total consideration received under all of the contracts.

It is possible that the lessee or its affiliate may enter into one or more exchanges. The MMS anticipates that, if there are any exchanges of oil produced from Indian lands at all, they would be quite rare. The MMS does not presently know of any specific examples of exchanges, but the proposed rule covers this contingency (see proposed § 206.52(e)). If the lessee or its affiliate ultimately sells the oil received in exchange, the value would be the gross proceeds for the oil received in exchange, adjusted for location and quality differentials derived from the exchange agreement(s). If the lessee exchanges oil produced from Indian leases to Cushing, Oklahoma, value would be the NYMEX price, adjusted for location and quality differentials derived from the exchange agreements. If the lessee does not ultimately sell the oil received in exchange, and does not exchange oil to Cushing, the lessee must ask MMS to establish a value based on relevant matters.

The only situation that is not covered under the proposed § 206.52 is where the lessee transports the oil produced from the lease to its own refinery. As mentioned above, there appears to be only one such case at the present time. In this circumstance, proposed § 206.53 would require the lessee to value the oil at the volume-weighted average of the gross proceeds paid or received by the lessee or its affiliate, including the refining affiliate, for purchases and sales under arm's-length contracts of other like-quality oil produced from the same field (or the same area if the lessee does not have sufficient arm's-length purchases and sales from the field) during the production month, adjusted for transportation costs. If the lessee purchases oil away from the field(s) and if it cannot calculate a price in the field(s) because it cannot determine the seller's cost of transportation, it would not include those purchases in the weighted-average price calculation.

III. Calculation of the Major Portion Value

Most Indian leases include a major portion provision, under which value may, in the discretion of the Secretary, be calculated on the basis of the ''highest price paid or offered at the time of production for the major portion of oil production from the same field.'' The current rule at 30 CFR 206.52(a)(2), promulgated in 1988 and recodified to its current section in 1996, provides that, if data are available to compute a major portion value, MMS will, where practicable, compare the major portion value to the value computed under the other provisions of that section. It further provides that the major portion value will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area). That production is then arrayed from the highest price to the lowest price (at the bottom). The major portion value is the price at which 50 percent (by volume) plus one barrel (starting from the bottom) is sold.

Historically, MMS has encountered considerable difficulty in calculating oil major portion values. Among other factors, complete sales price data for a producing field that includes particular Indian leases often is not available because the field also includes private or state leases (or both), whose working interest owners do not report to MMS. Quality information also has not been readily available in a practically usable form because currently there is no requirement to collect the crude oil type and API gravity (quality) information on the Form MMS–2014. By collecting the quality information needed to calculate major portion prices directly on Form MMS–2014, MMS would have all the necessary information to more accurately calculate major portion prices. For these and other reasons, calculating an accurate major portion value has most often not been practicable.

For oil produced from Indian leases, this proposed rule would use values reported for Indian oil produced from the designated area (discussed below) on Form MMS–2014, Report of Sales and Royalty Remittance, because it is the best data available to MMS in view of the fact that sales price information for production from state or private leases (that may be within the field) is not available. The proposed rule would allow MMS to identify designated areas, and MMS would publish in the **Federal Register** and make available on its Web site at *www.mrm.mms.gov* a list of the Indian lease number prefixes in each designated area. The proposed rule would allow MMS to designate and publish additional areas as circumstances warrant. For example, MMS may designate groups of counties in Oklahoma, for purposes of calculating major portion values for the Indian leases in Oklahoma, after conducting research regarding the location of the leases and the fields in which they are located. Those designated areas would be identified in a later notice. The MMS seeks comments on:

- Whether we should include arm's-length sales of oil produced from Federal leases within a designated area, as reported to MMS, in the calculation of the major portion value; and
- Whether we should expand the boundaries of the designated area beyond the reservation boundaries and include arm's-length sales of oil produced from Federal leases in the vicinity of a reservation, as reported to MMS, in the calculation of the major portion value.

The proposed rule would not use values reported for oil that is not ultimately sold at arm's length before being refined. Under the proposed rule, MMS would use the values reported to MMS under § 206.52. That will include all lessees' arm's-length sales and their affiliates' arm's-length re-sales. The MMS would adjust reported values for any applicable transportation allowances.

One of the tribal lessors takes a substantial portion of its royalty in kind rather than in value. The producers nevertheless do report a value for that oil on Form MMS–2014. The MMS understands that the value reported for the royalty-in-kind volumes is the price at which the lessee sold its working interest share. Under the proposed rule, MMS would include these values in the major portion calculation. Not doing so would result in loss of substantial volumes from the major portion calculation.

The only reported values that would not be included in the major portion calculation are values reported for oil that is refined without being sold at arm's length (i.e., values reported under § 206.53 or § 206.52(e)(4)). As noted above, MMS knows of only one such situation.

The MMS would not change the percentile at which the major portion value is determined. The MMS

historically has used the 50th-percentile-plus-one-unit measure for the major portion calculation. Because we believe almost all oil produced from Indian leases is sold at arm's length, there appears to be no reason in the oil context to depart from the major portion measure in the current rule.

There are a few older Indian leases that are still in production that do not contain a major portion provision and do not reserve to the Secretary the authority to determine the reasonable value of production. The major portion provisions of the proposed § 206.54 would not apply to those leases. However, the burden would be on the lessee to demonstrate that its lease has neither of these provisions. The MMS would presume that the lease has at least one of these provisions, unless the lessee demonstrates otherwise.

To calculate the major portion value, MMS must normalize the reported values for each oil type produced from the designated area to a common quality basis, adjusting for API gravity using applicable posted price gravity adjustment scale tables. The MMS would use posted price adjustment tables to adjust for gravity because the posted price adjustment tables are the only reliable source of this information that is available. The MMS's experience has been that the adjustment tables are accurate and are consistent between different parties who post prices. The MMS believes that the adjustment tables are likely to remain reliable because the posting purchasers are in competition. The MMS would use the posted price adjustment tables only for purposes of normalizing for gravity within a particular type of oil.

The MMS would calculate separate major portion values for different oil types because the lease provision expressly refers to ''like-quality'' oil (oil of the same type is of like quality). The proposed rule would define ''oil type'' as a general classification of oil that has generally similar chemical and physical characteristics. For example, oil types may include classifications such as New Mexico sour, Wyoming sweet, Wyoming asphalt sour, black wax, yellow wax, etc. Like-quality oil does not have to be of the same API gravity. Further normalizing for gravity within the oil type will yield reported prices in the major portion calculation that are based on a common quality. The MMS will designate the oil types that are produced from each designated area. A designated area may produce more than one oil type.

For MMS to be able to calculate major portion values based on oil type, and to be able to adjust reported arm's-length gross proceeds values for API gravity, MMS must require the royalty payors to report this information on Form MMS–2014. The API gravity is currently reported to MMS on production reports, but not in a manner that will allow the data to be used in conjunction with the royalty data reported. If a final rule adopts the major portion methodology proposed here, MMS would revise the reporting requirements for Indian leases for Form MMS–2014 to require lessees to report oil type and API gravity for Indian leases.

The MMS would then array the normalized and adjusted (for transportation costs) values in order from the highest to the lowest, together with the corresponding volumes reported at those values. The major portion value would be the normalized and adjusted price in the array that corresponds to 50 percent (by volume) plus one barrel of the oil (starting from the bottom). Proposed § 206.54(e) contains an example.

Under the proposed § 206.54, lessees would initially report on Form MMS–2014 the value of production at the value determined under § 206.52 or § 206.53, and would pay royalty on that value. The MMS would calculate the major portion values as described above and notify lessees of the major portion values by publishing the major portion values for each designated area in the **Federal Register** and making them available on MMS's Web site at *www.mrm.mms.gov*. The values that MMS publishes would be at the normalized gravity, and MMS would include the normalized gravity and the adjustment tables in the **Federal Register** and on the Web site.

The lessee would then compare the major portion value to the value initially reported on Form MMS–2014, normalized and adjusted for gravity and transportation. If the major portion value is higher than the value initially reported, normalized and adjusted for gravity and transportation, the lessee would have to submit an amended Form MMS–2014, reporting the value as the major portion value, and pay any additional royalty owed. The Web site also would include a due date by which the lessee would have to submit an amended Form MMS–2014, together with any additional royalty due. Proposed § 206.54(f) includes an example.

Under proposed § 206.54(g), late payment interest would not begin to accrue under 30 CFR 218.54 on any additional amount owed as a result of the higher major portion value, until after the due date of the amended Form MMS–2014. Further, MMS would not change the major portion values for a specific time period after it publishes those values on the Web site, unless an administrative or judicial decision requires MMS to make a change. The MMS will continue to calculate and publish major portion values for subsequent time periods.

IV. Transportation Allowances

As explained above, lessees report very few transportation allowances on oil produced from Indian leases. Only two royalty payors on Indian leases claimed transportation allowances for oil in 2004 on their initial royalty reports (Form MMS–2014) before later adjustments. The allowances reported by one of those payors on tribal leases in one area constituted approximately 98 percent of the claimed allowances in 2004.

If the transportation arrangement is at arm's length, the proposed rule would incorporate the provisions of the 2000 Federal Oil Rule that became effective on June 1, 2000 (as amended in 2004), in calculating that allowance. That allowance is based on the actual cost paid to an unaffiliated transportation provider. While the 2004 Federal Oil Rule did not change the consistent historical approach of using the actual costs paid to the unaffiliated transporter, the Federal rule, at 30 CFR 206.110, specifies more precisely what costs are allowable as transportation costs and what costs are not. As has been the case historically, MMS is proposing to continue to treat arm's-length transportation arrangements for oil produced from Indian leases identically to arm's-length transportation arrangements for oil produced from Federal leases.

For arm's-length transportation allowances, MMS also proposes to eliminate the requirement in the current Indian rule, at 30 CFR 206.55(c)(1), to file Form MMS–4110, Oil Transportation Allowance Report. Instead of Form MMS–4110, the lessee would have to submit copies of its transportation contract(s) and any amendments thereto within 2 months after the lessee reported the transportation allowance on Form MMS–2014. This change mirrors the elimination of the requirement to file the analogous Form MMS–4295 for arm's-length transportation allowances under the Indian Gas Valuation Rule, published on August 10, 1999 (64 FR 43506) (1999 Indian Gas Rule), and effective January 2000.

For non-arm's-length transportation arrangements, the lessee would have to calculate its actual costs. Under the proposed rule, Form MMS–4110 would

still be required, but the requirement to submit a Form MMS–4110 in advance with estimated information would be eliminated. Instead, the lessee would submit the actual cost information to support the allowance on Form MMS–4110 within 3 months after the end of the 12-month period to which the allowance applies. This also mirrors the change made in the 1999 Indian Gas Rule at 30 CFR 206.178(b)(1)(ii).

As MMS explained when it proposed these changes in the 1999 Indian Gas Rule, in the case of oil valuation, MMS ''believes this change will ease the burden on industry and still provide MMS with documents useful to verify the allowance claimed.''

The MMS is proposing that the non-arm's-length allowance calculation, and the costs that would be allowable and non-allowable under the non-arm's-length transportation allowance provisions, be revised to incorporate the provisions of the 2004 Federal Oil Rule. See proposed § 206.59(b). The MMS proposes treatment of costs identical to the treatment of costs in the 2004 Federal Oil Rule because it does not perceive any reason to treat oil pipeline transportation costs differently depending on lessor ownership. The MMS seeks comments on the question of whether allowable and non-allowable costs under this Indian oil valuation proposed rule should be different than the allowable and non-allowable costs under the 2004 Federal Oil Rule. Based on the comments, MMS may adopt all, part, or none of the changes that are different from the current Indian oil valuation regulations or the 1999 Indian Gas Rule.

The 2000 Federal Oil Rule provides that the lessee must base its transportation allowance in a non-arm's-length or no-contract situation, on the lessee's actual costs. These include (1) operating and maintenance expenses; (2) overhead; (3) depreciation; (4) a return on undepreciated capital investment; and (5) a return on 10 percent of total capital investment once the transportation system has been depreciated below 10 percent of total capital investment (30 CFR 206.111(b)). The MMS proposes to incorporate the same cost allowance structure into this proposed rule, as discussed in more detail below.

Before June 1, 2000, the regulations for Federal oil valuation provided (as do current Indian oil valuation regulations) that, in the case of transportation facilities placed in service after March 1, 1988, actual costs could include either depreciation and a return on undepreciated capital investment or a cost equal to the initial investment in the transportation system multiplied by the allowed rate of return. The regulations before June 1, 2000, did not provide for a return on 10 percent of total capital investment once the system has been depreciated below 10 percent of total capital investment. See former 30 CFR 206.105(b)(2)(iv)(A) and (B) (1999), and current 30 CFR 206.55(b)(2)(iv)(A) and (B). The 2000 Federal Oil Rule eliminated the alternative of a cost equal to the initial investment in the transportation system multiplied by the allowed rate of return, because it became unnecessary in view of the other changes made in the rule (discussed below), and because it had been used in very few, if any, situations. The MMS proposes to make the same change in this rule for the same reason the change was made to the 2000 Federal Oil Rule. The MMS knows of no instance in which the alternative has been used for any transportation system for oil produced from Indian leases.

Further, the 2000 Federal Oil Rule also set forth the basis for the depreciation schedule to be used in the depreciation calculation. See 30 CFR 206.111(h). The MMS proposes to adopt identical provisions for this rule through incorporation, except that the relevant date would be the effective date of a final rule that adopts these provisions. In the 2000 Federal Oil Rule, the depreciation schedule for a transportation system depended on whether the lessee owned the system on, or acquired the system after, the effective date of the final rule. The MMS proposes to apply the same principle in the context of Indian leases.

Finally, the 2004 Federal Oil Rule, which amended 30 CFR 206.111(i)(2), changed the allowed rate of return used in the non-arm's-length actual cost calculations from the Standard & Poor's BBB bond rate to 1.3 times the BBB bond rate. In March 2005, MMS promulgated an identical change to the allowed rate of return used in the calculation of actual costs under non-arm's-length transportation arrangements in the Federal Gas Valuation Rule, published March 10, 2005 (70 FR 11869) (2005 Federal Gas Rule), which amended 30 CFR 206.157(b)(2)(v). The proposed change to this rule would incorporate this same change, for the same reasons the rate of return was changed in the 2004 Federal Oil and 2005 Federal Gas Rules (*i.e.*, the 1.3 times BBB rate more accurately reflects the lessees' cost of capital).

At the present time (and as has been the case for at least the last few years), there is only one lessee producing oil from Indian leases who reports transportation of oil under a non-arm's-length arrangement. Therefore, only one non-arm's-length oil transportation allowance currently is being reported to MMS. However, in 2004, that arrangement accounted for more than 98 percent of total oil transportation allowances initially reported for Indian leases. In 2005 to date, it is the only Indian oil transportation allowance of any kind that any lessee is claiming on royalty reports submitted to MMS.

V. Other Issues

In proposed § 206.50, MMS would add a provision that, if the regulations are inconsistent with a Federal statute, a settlement agreement or written agreement, or an express provision of a lease, then the statute, settlement agreement, written agreement, or lease provision would govern to the extent of the inconsistency. A ''settlement agreement'' would mean a settlement agreement resulting from either administrative or judicial litigation. A ''written agreement'' would mean a written agreement between the lessee and the MMS Director (and approved by the tribal lessor for tribal leases), establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under the regulations.

The proposed provision is similar to provisions that have been included in the 2000 Federal Oil Rule and 2005 Federal Gas Rule. See 30 CFR 206.100(c) (2000–present) and 206.150(b) (2005). As explained in the preamble to the 2005 Federal Gas Rule, ''this provision is intended to provide flexibility to both MMS and the lessee in those few unusual circumstances where a separate written agreement is reached, while at the same time maintaining the integrity of the regulations. The MMS used this provision in the June 2000 Federal Oil Valuation Rule to address unexpectedly difficult royalty valuation problems.''

The MMS also proposes to add a definition of the term ''affiliate'' and revise the definition of ''arm's-length contract'' in § 206.51 to be identical to the 2000 Federal Oil Rule and to conform the rule to the court's decision in *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999). The MMS recently made the same change to the 2005 Federal Gas Rule at 30 CFR 206.151.

The MMS also proposes to modify the format of the definition of ''Exchange agreement'' in § 206.51 from the way that it is formatted in the 2000 Federal Oil Rule. The MMS is proposing to make this change only for the purpose of readability. The MMS does not intend

to change the meaning of the term ''Exchange agreement'' in any respect.

The MMS is also considering whether to change the definition of the term ''marketable condition'' in § 206.51 to mean lease products ''that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract or transportation contract typical for disposition of production from the field or area.'' This change is incorporated in the proposed rule. The current definition refers to lease products ''that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.'' We request your comments regarding this change.

In proposed § 206.57, MMS is also seeking comments on whether presenting certain information in a table versus text format would be preferable to the reader. In the proposed table format, MMS would also change the grouping of the information by presenting the main ideas in a table and then listing the considerations applicable to that information below the table in text format. The MMS wishes to use the format that makes the regulations the most clear and easily accessible.

Finally, proposed § 206.64 regarding records retention is adapted from 30 CFR 206.105. The time for which records must be maintained is governed by § 103(b) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1713(b), and is not affected by the change in 30 U.S.C. 1724(f), which was enacted as part of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), because RSFA applies only to Federal leases. The referenced regulations in proposed § 206.64 reflect this difference.

VI. Procedural Matters

1. Public Comment Policy

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

2. Summary Cost and Royalty Impact Data

Summarized below are the estimated administrative costs and royalty impacts of this proposed rule to all potentially affected groups: industry, state and local governments, Indian tribes and individual Indian mineral owners, and the Federal Government. The administrative costs and royalty collection impacts are segregated into two categories—those that would accrue in the first year after the proposed rule becomes effective and those that would accrue on a continuing basis each year thereafter.

A. Industry

For industry, we anticipate a royalty increase of $416,000 in the first year and each subsequent year. We also anticipate an administrative cost increase of $4,810,000 in the first year and, for subsequent years, a cost increase of $22,000 per year. In addition, we estimate administrative cost savings of $4,500 in the first and subsequent years. The following chart shows the royalty impact increase and summarizes the net expected change in administrative costs to industry.

NET ADMINISTRATIVE COST AND ROYALTY IMPACT TO INDUSTRY

Description	Administrative cost/royalty impact	
	First year	Subsequent years
(1) Royalty Increase	$416,000	$416,000
(2) Administrative Cost Increase	4,810,000	22,000
(3) Administrative Cost Savings	−4,500	−4,500
Net Expected Change in Administrative Costs	4,805,500	17,500

(1) *Industry royalty increase.* The MMS estimates that the oil valuation changes proposed in this proposed rule would increase the annual royalties that industry must pay to Indian tribes and individual Indian mineral owners by approximately $416,000. Based on revenues reported by companies in calendar year 2003, we calculate that small businesses (by U.S. Small Business Administration criteria) would pay approximately $162,240, or roughly 39 percent, of the increase. The computations of the additional mineral revenues payable to Indian tribes and individual Indian mineral owners can be found in Section VI.2.C, Indian Tribes and Individual Indian Mineral Owners.

(2) *Industry administrative cost increase.* The MMS estimates administrative costs to industry of $4,810,000 in the first year: (a) $4,788,000 for one-time equipment/software costs; (b) $200 for arm's-length contract submission costs; (c) $21,700 for additional reporting requirements; and (d) $100 for recordkeeping. The MMS estimates costs to industry in subsequent years of $22,000 ($200 for submission of all contract amendments; $21,700 for additional reporting requirements; and $100 for recordkeeping.)

(2a) *Industry administrative cost increase—Equipment/software.* Industry would incur a one-time cost increase for equipment/software modifications in order to conform to the new reporting requirements on Form MMS–2014. We estimate the following one-time cost to industry to comply with the proposed rule:

ADMINISTRATIVE COST DETAIL FOR EQUIPMENT/SOFTWARE

Description	Cost/royalty impact amount	
	First year	Subsequent year
Software development/modification: Electronic reporters—large companies	$3,000,000	0
Software development/modification: Electronic reporters—mid-level companies	1,780,000	0
Spreadsheet software: Paper reporters	8,000	0
Total Net Cost Increase to Industry	4,788,000	0

The above figures are calculated as follows: There are approximately 200 oil royalty reporters on Indian leases that fall into three groups: (1) Large companies (electronic reporters); (2) mid-level companies (electronic reporters); and (3) small companies (paper reporters). For each of the three groups of reporters, administrative costs are calculated as follows: large companies, \$3,000,000 (6 × \$500,000); mid-level companies, \$1,780,000 (178 × \$10,000); and paper reporters, \$8,000 (16 × \$500).

(2b) *Industry administrative cost increase—Filing arm's-length transportation contracts and amendments.* Industry would also incur \$200 per year to submit a copy of each arm's-length transportation contract and any amendments thereto within 2 months after the date the payor reported the transportation allowance on Form MMS–2014. Analysis of the most recent information reported to MMS on Form MMS–2014 indicates that there are only two payors claiming transportation allowances against royalties, and one of the payors has an arm's-length transportation arrangement.

On average, a payor would have one transportation contract to transport oil off the lease to a point of value determination. We estimate that a payor would need about 4 hours on average to gather the necessary contract information, copy, and submit it to MMS. Therefore, MMS estimates that the annual cost to industry would be \$200, calculated as follows:

(2b–1) *Industry administrative cost increase—Filing initial year arm's-length contract.* The first year cost is estimated at \$200, calculated as follows: 1 payor × 1 arm's-length contract submission per year × 4 hours per submission = 4 burden hours per year × \$50 per hour = \$200 per year in the initial year.

(2b–2) *Industry administrative cost increase—Filing subsequent year arm's-length-contract amendments.* In subsequent years, we estimate the payor would submit amendments once per year due to contract changes. The subsequent annual cost is estimated at \$200, calculated as follows: 1 payor × 1 arm's-length contract amendment submission per year × 4 hours per submission = 4 burden hours per year × \$50 per hour = \$200 per year in subsequent years.

(2c) *Industry administrative cost increase—Filing revised Form MMS–2014 for major portion.* The total annual estimated cost for filing additional Form MMS–2014 lines would be \$21,700 for the entire universe of 200 reporters.

Under the proposed rule, MMS would calculate a major portion value by oil type for each designated area. The major portion value would be based on arm's-length reported values from Form MMS–2014. If the MMS-calculated major portion value is greater than what the lessee initially reported, the lessee would have to file a revised Form MMS–2014 and pay additional royalties.

Industry would incur an administrative burden as a result of filing revised Form MMS–2014 lines to comply with the proposed rule's major portion provision. The MMS analyzed reported royalty data for Indian leases and determined there are approximately 31,000 individual lines reported for oil and condensate on Form MMS–2014 annually. We estimate that, under the proposed rule using recent data, there would be as many as 12,400 additional lines reported annually, or 1,033 lines monthly. This estimate includes backing out previously reported lines and reporting new lines. The MMS bases potential impact to reporting on our assumption that 40 percent of Indian payors would report on initial value less than the major portion value and would therefore have to make adjustments (31,000 × 40 percent = 12,400).

(2c–1) *Industry administrative cost increase—Electronic reporting.* Electronic reporting accounts for about 98 percent of the lines reported to MMS by Indian lessees on Form MMS–2014. Based on an average of 2 minutes per line at a cost of \$50 per hour, we estimate the administrative burden would be \$20,250 annually calculated as follows: 98 percent electronic reporting lines × 12,400 additional royalty lines = 12,152 lines per year × 2 minutes per line = 24,304/60 minutes = 405 hours per year × \$50 per hour = \$20,250 per year.

(2c–2) *Industry administrative cost increase—Paper reporting.* The MMS estimates there would be 248 additional royalty lines reported manually (2 percent of reported Indian oil lines) and that this effort would stay the same in the future. Based on an average of 7 minutes per line at \$50 per hour, the administrative burden for manual payors would be \$1,450 annually, calculated as follows: 2 percent paper reporting lines × 12,400 additional royalty lines = 248 lines per year × 7 minutes per line = 1,736/60 minutes = 29 hours per year × \$50 per hour = \$1,450 per year.

(2d) *Industry administrative cost increase—Recordkeeping for transportation submissions.* The recordkeeping burden for transportation submissions, related to transportation allowances, is estimated at 2 hours for a total cost of \$100 (\$50 for 1 arm's-length submission and \$50 for 1 non-arm's-length submission), and calculated as follows: 1 payor × 1 arm's-length submission per year × 1 hour per submission = 1 burden hour per year × \$50 per hour = \$50 per year; and 1 payor × 1 non-arm's-length submission per year × 1 hour per submission = 1 burden hour per year × \$50 per hour = \$50 per year.

(3) *Industry administrative cost savings.* Industry would realize administrative savings because of the reduced complexity in royalty determination and payment in this proposed rule. Altogether, with the limited information we can collect and the gross estimates we made, we anticipate total administrative savings to industry would be \$4,500. This includes

industry savings for the following: (a) $2,400 for simplified reporting and (b) $2,100 for reduced reporting on Form MMS–4110, Specifically, the proposed rule would result in:

(3a) *Industry administrative cost savings—Simplified reporting and valuation, coupled with certainty.* We estimate the cost savings would be $2,400 for simplified reporting and valuation, coupled with certainty. We anticipate that the proposed rule would significantly reduce the time involved in the royalty calculation process. In the proposed framework, in almost all cases, the lessee would ultimately pay royalties based on either its (or its affiliate's) arm's-length gross proceeds or the major portion value applicable to its production. The need to work through and apply the current benchmarks for non-arm's-length transactions would be eliminated. Further, once MMS calculates a major portion value, the lessee would compare this price to the major portion value and make adjustments as necessary. The lessee's reporting/pricing procedures thus should be fairly straightforward.

In addition, the proposed rule parallels the transportation allowance requirements of the current Federal oil valuation regulations in many respects. It thereby would further reduce the complexity of valuation between Federal and Indian leases.

The estimated savings to industry are based on the current amount of time spent calculating royalties. This varies greatly by company, depending on many variables such as the complexity of the disposition or sale of the product, the amount of production to account for, and the computation of any necessary adjustments.

However, we assume simplified reporting in the proposed rule would save each payor who reports based on a non-arm's-length disposition at least 30 minutes per month to report. This figure realizes a reduction of 6 hours per year per payor at $50 per year for a savings of $300 per year per payor.

Eight of the 200 oil payors reported a non-arm's-length Sales Type Code on the Form MMS–2014. For these payors, we estimate a total savings of $2,400, calculated as follows: 6 annual burden hour savings per payor × 8 payors = 48 hours industry savings × $50 per hour = $2,400 total annual industry savings.

(3b) *Industry administrative cost savings—Reduction in filing Form MMS–4110, Oil Transportation Allowance Report.* We estimate the cost savings to be $2,100 for a reduction in filing Form MMS–4110. Under arm's-length transportation arrangements, MMS proposes to eliminate the requirement to file Form MMS–4110. Under non-arm's-length transportation arrangements, the lessee would continue to submit actual costs, but the requirement to submit estimated allowance information would be eliminated. We estimate the savings at $2,100.

The MMS used the current information collection request data to calculate the estimated savings for allowance form filing under the proposed rule.

(3b–1) *Arm's-length transportation.* Proposed requirements would eliminate filing both estimated and actual costs, calculated as follows: 3 payors × 4 hours per submission × 2 submissions per year = 24 burden hours per year × $50 per hour = $1,200 per year savings.

(3b–2) *Non-arm's-length transportation.* Proposed requirements would eliminate filing estimated costs, calculated as follows: 3 payors × 6 hours per submission × 1 submission per year = 18 burden hours per year × $50 per hour = $900 per year savings. The requirement would continue for filing actual costs on Form MMS–4110, for payors with non-arm's-length transportation arrangements.

Summary of Impacts to Industry. The royalty impact of the proposed rule on industry would be $416,000 annually. Industry's administrative costs would increase by $4,810,000 ($4,788,000 + $200 + $21,700 + $100) in the first year and $22,000 ($200 + $21,700 + $100) every year thereafter. Industry would realize administrative cost savings of $4,500 ($2,400 + $2,100) in the first year and every year thereafter. The net expected increase in administrative costs would be $4,805,500 ($4,810,000 − $4,500) in the first year and $17,500 ($22,000 − $4,500) in subsequent years.

B. State and Local Governments

No additional cost or royalty impact would be incurred by state and local governments as a result of the proposed rule for the first year or any subsequent year.

C. Indian Tribes and Individual Indian Mineral Owners

We estimate that our proposed oil valuation regulations would result in increased annual Indian oil royalties of approximately $416,000 related to the calculation of major portion values. We do not estimate any decrease or increase in royalties related to the elimination of the current benchmarks for valuing Indian oil not sold at arm's-length. The proposed rule instead requires the value to be based on the affiliate's arm's-length resale price which should approximate the value determined under the benchmarks. Additionally, because there is only one Indian payor with a non-arm's-length transportation situation and that one pipeline is fully depreciated, we estimate no impact on Indian royalties from the change in the rate of return to 1.3 times the Standard & Poor's BBB bond rate.

NET ROYALTY INCREASE TO INDIAN TRIBES AND INDIVIDUAL INDIAN MINERAL OWNERS

Description	Administrative cost/royalty impact	
	First year	Subsequent years
(1) Royalty Increase	$416,000	$416,000
(2) Administrative Cost Increase	0	0
(3) Administrative Cost Savings	0	0
Net Expected Change in Administrative Costs	0	0

(1) *Indian royalty increase.* (1a) *Data analyzed.* For the analysis of the potential royalty impact on the Indian tribes and individual Indian mineral owners or additional mineral revenues associated with the proposed rule, we used year 2003 royalty information reported on Form MMS–2014 because it (1) represents a typical production year with no major market interruptions, and (2) reflects data where reporting edits and some compliance activities have been performed.

We performed the major portion calculations for the top designated areas

which accounted for 95.75 percent of all royalty received in value for oil and condensate on Indian lands. We projected the royalty impact on all Indian tribes and Indian mineral owners to the remaining designated areas.

(1b) *Determining the major portion value at the 50-percent level.* Under the proposed rule, MMS would calculate monthly major portion values by arraying reported arm's-length sales and associated volumes from highest to lowest price and applying the price associated with the sale where accumulated volumes exceed 50 percent plus 1 barrel of oil of the total, starting from the bottom.

In order to calculate this major portion value for the analysis, we used arm's-length sales of oil and condensate reported on Form MMS–2014 for Indian leases. For each oil type in the designated areas, we normalized the reported prices in the array for API gravity using applicable posted price gravity adjustment tables for the area and adjusted for transportation.

The proposed rule provides for API gravity and oil type information to be gathered via Form MMS–2014. In the analysis, we used the API gravity reported on Form MMS–4054, Oil and Gas Operations Report, and made assumptions in order to correlate the API gravity data to Form MMS–2014 royalty information. Because oil type data is not currently reported to MMS, we assumed different oil types by analyzing the reported API gravity and price differences in an attempt to differentiate between oil types.

(1c) *Comparison of values.* We calculated the major portion liabilities for individual payors by comparing the major portion value to the reported value per barrel (normalized and adjusted for API gravity and transportation). If the reported value per barrel was less than the major portion value, the difference was multiplied times the associated volume subject to royalty times the royalty rate. The resulting amount was the additional royalties owed to the Indian tribe or individual Indian mineral owner.

In the analysis, we totaled the additional royalties for both oil and condensate. Under the provisions of the proposed rule, the total additional royalties for all tribal and allotted leases is estimated at approximately 1.6 percent of the total royalties reported in 2003.

Typically, the additional royalty associated with the major portion calculation increases as the number of payors on the reservation increases. We observed that, for designated areas with few payors, little additional royalty resulted from the major portion calculation. On the other hand, when many payors reported, the additional royalty associated with the major portion calculation increased.

(1d) *Projection of gains to all tribes and individual Indian mineral owners.* To estimate the total annual dollar impact for all tribal and allotted leases from oil and condensate in 2003, MMS used the combined dollar increase calculated for the top nine designated areas in terms of royalty receipts. Royalties received by these nine designated areas ($24,866,256) represented 95.75 percent of the total Indian oil and condensate in value royalties actually reported in 2003. We estimated that under the proposed rule total royalties for the nine designated areas would increase by about 1.6 percent (percentage from the major portion analysis performed for 2003) or $397,860. We projected the increase for all Indian recipients, as follows:

$(\$397,860 \times 100)/95.75 = \$415,520$

We estimated that the total increase for all Indian royalty recipients under the proposed rule would be approximately $416,000 (rounded up from $415,520) or about 1.6 percent of the total royalties reported for Indian properties.

(2) *Indian administrative cost impact.* There is no administrative cost to Indian tribes or individual Indian mineral owners.

(3) *Indian administrative cost savings.* There is no administrative cost savings to Indian tribes or individual Indian mineral owners.

Summary of Impacts to Indian Tribes and Individual Indian Mineral Owners. The proposed rule would result in an annual increase of $416,000 in royalties owed to Indian tribes and individual Indian mineral owners. There would be no administrative cost impacts to Indian tribes and individual Indian mineral owners.

D. Federal Government

The proposed rule has no royalty impact to the Federal Government. We anticipate that the proposed rule would result in increased administrative costs to the Federal Government of $998,100 in the first year and $312,100 for subsequent years. The Federal Government would realize administrative costs savings of $900 in the first year and in subsequent years. The net expected change in administrative costs would be an increase of $997,200 for the first year and $311,200 for subsequent years.

In addition, since the proposed rule would eliminate the use of the non-arm's-length benchmarks, the need for audit work associated with applying the benchmarks would also be eliminated. Any resources that would be designated for this audit work could be reallocated to other audits and increase overall coverage on Indian properties.

NET ADMINISTRATIVE COST AND ADMINISTRATIVE COST SAVINGS TO THE FEDERAL GOVERNMENT

Description	Administrative cost/royalty impact	
	First year	Subsequent years
(1) Royalty Impact	0	0
(2) Administrative Cost Increase	$998,100	$312,100
(3) Administrative Cost Savings	−900	−900
Net Expected Change in Administrative Costs	997,200	311,200

(1) *Federal Government royalty impact.* There is no royalty impact to the Federal Government.

(2) *Federal Government administrative cost increase.* (2a) *Implementation of the proposed rule—First year administrative costs (ICR 1010–0140, Form MMS–2014).* These costs are estimated at $998,000 ($500,000 + $450,000 + $36,000 + $12,000 = $998,000). The MMS estimates that the initial set-up of the major portion calculation would be the greatest burden. This set-up would primarily involve researching the

quality aspects of the oil and condensate produced on tribal and allotted leases and writing the programming code to calculate the major portion figures for all designated areas. The initial cost of systems development and modification to Form MMS–2014 is estimated at $500,000. In addition, developing an automated tool to calculate major portion and identify potential underpayments is estimated at $450,000.

There are costs associated with implementing the new rule in addition to systems costs. The MMS must conduct training sessions, update manuals, issue Dear Payor letters, etc. We estimate an additional $36,000 for training and $12,000 for manual updates, Dear Payor letters, etc. These implementation costs are associated with the initial year after the publication of the rule.

(2b) *MMS Major portion value calculations—Subsequent years administrative costs (ICR 1010–0140, Form MMS–2014).* After the first year of implementation and set up, MMS would incur ongoing costs of $312,000 annually in subsequent years to calculate major portion value. The proposed rule would define 12 MMS-designated areas, typically corresponding to reservation boundaries, and require separate major portion calculations by oil type. Additionally, of the 12 designated areas, about 7 of those would require distinct oil major portion calculations for condensate. Considering a separate monthly price by oil type and product (oil/condensate), MMS would calculate over 300 major portion values annually.

The number of producing oil leases, payors, and complexities of each area would directly affect the burden of performing the major portion calculations. There would be an ongoing burden to MMS to perform the calculations for each month and update the programming code and quality aspects, as production is added or abandoned. There also would be administrative costs associated with notifying the tribes and payors of the major portion calculations as well as additional workload in performing oil major portion compliance reviews. This cost is estimated to involve three full time employees' time or $312,000 per annum (3 FTE × 2,080 hours per year × $50 per hour = $312,000).

(2c) *Processing arm's-length contracts and amendments.* The MMS would also incur $100 per year to process companies' arm's-length transportation contract or amendment submissions, calculated as follows: 1 arm's-length contract or amendment submission per year × 2 hours per submission = 2 burden hours per year × $50 per hour = $100 per year.

(3) *Federal Government administrative cost savings.* The MMS would realize administrative savings because of reduced complexity in royalty determination and payment under this proposed rule. Specifically, the proposed rule would result in:

(3a) *Reduction in processing Form MMS–4110, Oil Transportation Allowance Report.* Under arms-length transportation arrangements, MMS proposes to eliminate the requirement to file Form MMS–4110. For non-arm's-length transportation arrangements, the lessee would submit the actual cost information to support the allowance on Form MMS–4110 within 3 months after the end of the 12-month period to which the allowance applies. We propose to eliminate the requirement to submit estimated allowance information.

(3a–1) *Arm's-length transportation*—Would eliminate filing both estimated and actual costs, calculated as follows: 3 payors × 2 hours per submission × 2 submissions per year = 12 burden hours per year × $50 per hour = $600 per year.

(3a–2) *Non-arm's-length transportation*—Would eliminate filing estimated costs, calculated as follows: 3 payors × 2 hours per submission × 1 submission per year = 6 burden hours per year × $50 per hour = $300 per year.

Summary of Impacts to the Federal Government. The proposed rule would have no impact on royalties owed to the Federal Government. We estimate an administrative cost increase of $998,100 in the first year and $312,100 every year thereafter. We estimate the total administrative cost savings to the Federal Government would be $900 ($600 + $300) in the first year and every year thereafter. The net expected change in administrative costs would be a net increase of $997,200 ($998,100 − $900) in the first year and a net increase in subsequent years of $311,200 ($312,100 − $900).

E. Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Tribes and Individual Indian Mineral Owners, and Federal Government

In the table, a negative number means a reduction in payment or receipt of royalties or a reduction in costs. A positive number means an increase in payment or receipt of royalties or an increase in costs.

SUMMARY OF ADMINISTRATIVE COSTS AND ROYALTY IMPACTS

Description	Administrative cost and royalty increase or royalty decrease	
	First year	Subsequent years
A. Industry:		
(1) Royalty Increase	$416,000	$416,000
(2) Administrative Cost Increase	4,810,000	22,000
(3) Administrative Cost Savings	−4,500	−4,500
Net Expected Change in Administrative Costs	4,805,500	17,500
B. State and Local Governments:		
(1) Royalty Impact	0	0
(2) Administrative Cost Increase	0	0
(3) Administrative Cost Savings	0	0
Net Expected Change in Administrative Costs	0	0
C. Indian Tribes and Individual Indian Mineral Owners:		
(1) Royalty Increase	416,000	416,000
(2) Administrative Cost Increase	0	0
(3) Administrative Cost Savings	0	0
Net Expected Change in Administrative Costs	0	0

SUMMARY OF ADMINISTRATIVE COSTS AND ROYALTY IMPACTS—Continued

Description	Administrative cost and royalty increase or royalty decrease	
	First year	Subsequent years
D. Federal Government:		
(1) Royalty Impact	0	0
(2) Administrative Cost Increase	998,100	312,100
(3) Administrative Cost Savings	−900	−900
Net Expected Change in Administrative Costs	997,200	311,200

Note: Some of the data supporting this analysis cannot be released because of proprietary data concerns.

3. Regulatory Planning and Review, Executive Order 12866

This document is a significant rule and the Office of Management and Budget has reviewed this rule under Executive Order 12866.

1. This rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, we have performed an analysis of costs and royalty impacts, which is discussed in detail in the Procedural Matters section of this document.

2. This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule raises novel legal or policy issues.

4. Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–800–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Would not have an annual effect on the economy of $100 million or more.

2. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, Indian, or local government agencies, or geographic regions.

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

1. This proposed rule would not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This proposed rule would not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a significant regulatory action under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 will meet the requirements of the Unfunded Mandates Reform Act. See the analysis in Section VI.2, Summary Cost and Royalty Impact Data.

7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required.

8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this proposed rule would not have significant federalism implications. A federalism assessment is not required. It would not substantially and directly affect the relationship between the Federal and state governments. The management of Indian leases is the responsibility of the Secretary of the Interior, and all royalties collected from Indian leases are distributed to tribes and individual Indian mineral owners. This proposed rule would not alter that relationship.

9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rule, RIN 1010–AD00, would contain new information collection requirements (ICR). The title of the new ICR is "30 CFR 206—PRODUCTION VALUATION, Subpart B—Indian Oil."

The proposed rule would affect two existing ICRs: ICR 1010–0140 (expires October 31, 2006) and ICR 1010–0103 (expires April 30, 2006). The net estimated proposed burden hour change for the two ICRs is 338 burden hours. For ICR 1010–0140, there is an estimated net increase of 386 burden hours per year and, for ICR 1010–0103, an estimated net decrease of 48 burden hours per year, both due to program changes.

The intent of this proposed rulemaking is to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address the unique terms of Indian (tribal and allotted) leases—specifically, the major portion provision. Most Indian leases include a major portion provision, stating that value for royalty purposes may, in the discretion of the Secretary, be the highest price paid or offered at the time of production for the major portion of oil produced from the same field. The additional information collection requirements in this proposed rulemaking would allow MMS and the tribes to ensure that Indian mineral lessors receive the proper value for oil produced from their land under the lease terms and these proposed rules.

We have submitted an ICR to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. If this proposed rule is adopted as a final rule, we will prepare the required Forms OMB 83–C and transfer the burden hours and costs to their respective primary collections. As part of our continuing effort to reduce paperwork and respondent burden, we will invite the public and other Federal agencies to comment on any aspect of the reporting burden through the information collection process.

Submit written comments by either fax (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior [OMB Control Numbers ICR 1010–0140 (expires October 31, 2006) and ICR 1010–0103 (expires April 30, 2006), as they relate to the proposed Indian oil valuation rule].

Also submit copies of written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

The OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

Information Collection Requests

The net estimated annual hour burden cost is 338 hours (386 − 48 hours = 338 hours) or, using $50 per hour, $16,900 ($19,300 − $2,400). For ICR 1010–0140, there would be an increase of 386 burden hours or $19,300. For ICR 1010–0103, there would be a decrease of 48 burden hours or $2,400. Computation details are shown below.

ICR 1010–0140 Hour Burden Cost

The net impact of changes related to ICR 1010–0140 is estimated at 386 hours (434 − 48 hours = 386 hours) or, using an average of $50 per hour, $19,300 ($21,700 − $2,400 = $19,300).

The proposed rule would require the collection of new information under ICR 1010–0140 on Form MMS–2014, Report of Sales and Royalty Remittance. There are approximately 200 payors on Indian oil-producing leases, who report on Form MMS–2014. We estimate that this new reporting requirement would result in 12,400 additional royalty line submissions per year (12,152 lines from electronic reporters and 248 lines from paper reporters). For electronic reporters, we estimate an increase of 405 burden hours annually (12,152 lines × 2 minutes per line = 24,304 minutes/60 minutes per hour = 405 hours). For paper reporters, we estimate an increase of 29 burden hours annually (248 lines × 7 minutes per line = 1,736 minutes/60 minutes per hour = 29 hours). The total additional annual burden is 434 hours (405 + 29). Using an average of $50 per hour, the total cost to respondents would be $21,700 (434 hours × $50) for the additional reporting requirements.

Further, we estimate that the provisions of the rule would result in additional savings of $2,400 for simplified reporting and pricing, coupled with certainty, for 8 payors with non-arm's-length dispositions of their oil. For 96 annual submissions of Form MMS–2014 (8 payors × 12 report months), we estimate that respondents would save 30 minutes per response, or 48 hours annually (96 submissions × 30 minutes = 2,880 minutes/60 minutes = 48 hours per year savings). Using an average cost of $50 per hour, the total savings to respondents would be $2,400 (48 hours × $50).

PROPOSED INCREASE IN BURDEN HOURS FOR ICR 1010–0140

[Includes only proposed citation 30 CFR 206 burden hour changes]

Burden hours per response	Average number of annual responses (lines)	Estimated annual burden hours
Electronic Reporting (98 percent):		
2 minutes	12,152	405
Paper Reporting (2 percent):		
7 minutes	248	29
Total Estimated Burden Increase	12,400	434

Note: The above burden hours relate to 200 payors on Indian oil-producing leases.

PROPOSED DECREASE IN BURDEN HOURS FOR ICR 1010–0140

[Includes only proposed citation 30 CFR 206 burden hour changes]

Annual burden hours per response	Average number of annual responses	Estimated annual burden hours
Simplified Reporting:		
30 minutes savings per month	96	−48
Total Estimated Burden Decrease	96	−48

Note: The above burden hours relate to 8 payors with non-arm's-length dispositions on Indian oil-producing leases.

ICR 1010–0103 Hour Burden Cost

In addition, the proposed changes would affect ICR 1010–0103. The changes in filing requirements for Form MMS–4110, Oil Transportation Allowance Report, would result in a small overall reduction in the burden hours for both arm's-length contracts and non-arm's-length or no contract. In ICR 1010–0103, MMS estimated that six Indian lessees would report on the Form MMS–4110. The current OMB-approved annual hours for Form MMS–4110 are 60, and the proposed hours are estimated to be 12, for a net estimated decrease of 48 burden hours annually. This would result in a net estimated savings of $2,400 (48 hours × $50), detailed as follows:

- $1,200 annual decrease for arm's-length transportation proposed requirements that would eliminate filing both estimated and actual costs (6 submissions per year × 4 burden hours per submission = 24 burden hours per year × $50 per hour = $1,200 annual decrease);
- $900 annual decrease for non-arm's-length transportation proposed requirements that would eliminate filing estimated costs (3 submissions per year × 6 burden hours per submission = 18 burden hours per year × $50 per hour = $900 annual decrease);
- $600 annual decrease for an adjustment in the number of responses for actual-cost reporting requirements for payors with non-arm's-length situations (reduction in number of responses from 3 to 1 = 2-response reduction × 6 burden hours per response = 12 burden hours per year × $50 = $600 annual decrease);
- $200 annual increase related to reporting arm's-length contracts (1 response per year × 4 burden hours per submission × $50 per hour = $200 annual increase); and
- $100 annual increase related to recordkeeping (1 response per year × 2 burden hours per year × $50 per hour = $100 annual increase).

The following chart shows the estimated burden hours by CFR section and paragraph.

RESPONDENTS' ESTIMATED BURDEN HOUR CHART

Citation 30 CFR 206 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Indian Oil Transportation Allowances			
Proposed Rule Eliminates § 206.55(a)(1)(i).	*Arm's-length transportation contracts.* * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report. * * *.	See § 206.55(c)(1)(i) and (iii). Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(b)(1).	*Non-arm's-length or no contract.* * * * Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety. * * *.	See § 206.55(c)(2)(i), and (iii). Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(c)(1)(i).	*Reporting requirements. Arm's-length contracts.* With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. * * *.	−4	−3	−12
Proposed Rule Eliminates § 206.55(c)(1)(iii).	*Arm's-length contracts.* After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	−4	−3	−12
Proposed Rule Eliminates § 206.55(c)(1)(iv).	*Arm's-length contracts.* MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.	Produce Records—The Office of Regulatory Affairs (ORA) determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		

RESPONDENTS' ESTIMATED BURDEN HOUR CHART—Continued

Citation 30 CFR 206 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
		Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(c)(2)(i).	*Non-arm's-length or no contract.* With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * * The initial report may be based upon estimated costs.	−6	−3	−18
Proposed Rule Revises § 206.55(c)(2)(iii) and Moves the Citation to § 206.60.	*Non-arm's-length or no contract.* For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	−6 Proposed Rule Revises and Moves	−3 Proposed Rule Revises and Moves	−18 Proposed Rule Revises and Moves
Proposed Rule Eliminates § 206.55(c)(2)(iv).	*Non-arm's-length or no contract.* For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. * * *.	See § 206.55(c)(2)(i). Proposed Rule Eliminates		
Proposed Rule Eliminates § 206.55(c)(2)(vi).	*Non-arm's-length or no contract.* Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The date shall be provided within a reasonable period of time, as determined by MMS.	Produce Records The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions Proposed Rule Eliminates		
	Total Hour Burden Eliminated			−60
Proposed Rule § 206.52(e)(4).	How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract? (e)(4) * * * you must request that MMS establish a value for the oil based on relevant matters. * * *.	See § 206.58		
Proposed Rule § 206.53(c).	How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract? (c) If you demonstrate to MMS's satisfaction that. * * *.	Covered under renewal for ICR 1010–0103 (expires April 30, 2006).		
Proposed Rule § 206.54.	How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil? * * * The MMS will presume that all Indian leases have at least one of these provisions unless you demonstrate otherwise. * * *.	See § 206.58.		
Proposed Rule § 206.57(a).	How do I calculate a transportation allowance under an arm's-length transportation contract? * * * You must be able to demonstrate that you or your affiliate's contract is at arm's length. * * *.	See § 206.58.		
Proposed Rule § 206.57(d)(3).	How do I calculate a transportation allowance under an arm's-length transportation contract? (d)(3) You may propose to MMS a cost allocation method on the basis of the values of the products transported. * * *.	See § 206.58.		
Proposed Rule § 206.57(e) and (e)(2).	How do I calculate a transportation allowance under an arm's-length transportation contract? (e) * * * then you must propose an allocation procedure to MMS. * * * (2) You must submit your initial proposal. * * *.	See § 206.58		
Proposed Rule § 206.57(g)(2).	How do I calculate a transportation allowance under an arm's-length transportation contract? (g)(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price.	See § 206.58.		

RESPONDENTS' ESTIMATED BURDEN HOUR CHART—Continued

Citation 30 CFR 206 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Proposed Rule § 206.58.	What are my reporting requirements under an arms-length transportation contract? You have the burden of demonstrating that your contract is arms-length. You must submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your Form MMS–2014 on which a transportation allowance is reported.	4	1	4
Proposed Rule § 206.60.	What are my reporting requirements under a non-arm's-length transportation arrangement? All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4110, Oil Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.	6	1	6
Proposed Rule § 206.62.	May I ask MMS for valuation guidance? * * * You may produce a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. * * *.	Covered under renewal for ICR 1010–0103 (expires April 30, 2006).		
Proposed Rule § 206.64(a).	What record must I keep and produce? (a) On request, you must make available sales, volume, and transportation data. * * *.	Produce Records The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
Proposed Rule § 206.64(b).	What records must I keep and produce? (b) You must retain all data relevant data to the determination of royalty value. * * *.	1	2	2
Proposed Rule § 206.64(b).	What records must I keep and produce? (b) * * * The MMS, Indian representatives, or other authorized persons may review and audit such data you possess, and * * *.	Produce Records The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
	Total Hour Burden for Proposed Rule			12
	Total Net Hour Burden Decrease			−48

Note: The current OMB-approved burden hours are 60 for Form MMS–4110 and transportation contracts (previously on ICR 1010–0061, recently consolidated into ICR 1010–0103). The new burden hours for this program change are estimated to be 12, for a net decrease of 48 burden hours annually due to program change.

Summary Administrative Non-Hour Cost Data

The net estimated first year non-hour burden cost is $4,788,000. There are no other non-hour burden costs associated with this ICR for the first year or future years. Computation details are shown below.

ICR 1010–0140 Non-Hour Burden Cost: This proposed rule would impose a non-hour cost burden on industry. Industry would incur a one-time cost increase of $4,788,000 for equipment/software modifications in order to conform to the new reporting requirements on Form MMS–2014. If the final rule adopts the proposed program changes, MMS would revise the reporting requirements and Form MMS–2014 to require lessees to report oil types and their associated API gravity for Indian oil-producing leases. These reporting changes are discussed in the proposed 30 CFR 206.54, and they would be further detailed in the final rulemaking, if adopted. We estimate the following one-time cost to industry to comply with the proposed rule:

ADMINISTRATIVE COST DETAIL FOR EQUIPMENT/SOFTWARE

Description	Administrative cost/royalty impact	
	First year	Subsequent year
Software development/modification: Electronic reporters—large companies	$3,000,000	0
Software development/modification: Electronic reporters—mid-level companies	1,780,000	0
Spreadsheet software: Paper reporters	8,000	0

ADMINISTRATIVE COST DETAIL FOR EQUIPMENT/SOFTWARE—Continued

Description	Administrative cost/royalty impact	
	First year	Subsequent year
Total Net Cost Increase to Industry	4,788,000	0

The above figures are calculated as follows: There are approximately 200 oil royalty reporters on Indian leases that fall into three groups: (1) Large companies (electronic reporters); (2) mid-level companies (electronic reporters); and (3) small companies (paper reporters). For each of the three groups of reporters, administrative costs are calculated as follows: large companies, $3,000,000 (6 × $500,000); mid-level companies, $1,780,000 (178 × $10,000); and paper reporters, $8,000 (16 × $500).

ICR 1010–0103 Non-Hour Burden Cost: There is no identified non-hour burden cost.

Public Comment Policy. The PRA (44 U.S.C. 3501, *et seq.*) 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. Before submitting an ICR to OMB, PRA § 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

We will post all comments in response to this proposed information collection on our Web site at *www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

11. National Environmental Policy Act

This proposed rule deals with financial matters and would have no direct effect on MMS decisions on environmental activities. Pursuant to 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process.

12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that the changes we are proposing may have an impact on tribes and individual Indian mineral owners. During the writing of this proposed rule, we have consulted extensively with tribal representatives and individual Indian mineral owners regarding the regulatory changes affecting tribes and individual Indian mineral owners in this proposed rule. The MMS will determine how to proceed with this rulemaking based on comments received.

13. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation would not have a significant effect on the Nation's energy supply, distribution, or use. The proposed changes better reflect the way industry accounts internally for its oil valuation and provides a number of technical clarifications. None of these proposed changes would impact significantly the way industry does business and, accordingly, would not affect their approach to energy

development or marketing. Nor would the proposed rule otherwise impact energy supply, distribution, or use.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

This proposed rule does not have tribal implications that would impose substantial direct compliance costs on Indian tribal governments. In accordance with Executive Order 13175, and with the Department's policy to consult with individual Indian mineral owners on all policy changes that may affect them, MMS scheduled public meetings in three different locations, announced February 22, 2005, in a **Federal Register** notice (70 FR 8556), for the purpose of consulting with Indian tribes and individual Indian mineral owners and to obtain public comments from other interested parties. The public meetings were held on March 8, 2005, in Oklahoma City, Oklahoma; on March 9, 2005, in Albuquerque, New Mexico; and on March 16, 2005, in Billings, Montana. The MMS also held five additional consultation sessions with tribes and individual Indian mineral owners to discuss and hear comments, including sessions in Window Rock, Arizona, on June 7, 2005; Fort Duchesne, Utah, on June 9, 2005; Fort Washakie, Wyoming, on June 15, 2005; Muskogee, Oklahoma, on June 16, 2005; and Anadarko, Oklahoma, on June 17, 2005.

15. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 204.200 What is the purpose of this part?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 206

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: November 3, 2005.

Chad Calvert,

Acting Assistant Secretary for Land and Minerals Management.

For the reasons set forth 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.*, 396a *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.*

2. Subpart B—Indian Oil is revised to read as follows:

Subpart B—Indian Oil

Sec.
206.50 What is the purpose of this subpart?
206.51 What definitions apply to this subpart?
206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?
206.53 How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract?
206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?
206.55 What are my responsibilities to place production into marketable condition and to market the production?
206.56 What transportation allowances apply in determining the value of oil?
206.57 How do I calculate a transportation allowance under an arm's-length transportation contract?
206.58 What are my reporting requirements under an arm's-length transportation contract?
206.59 How do I calculate a transportation allowance under a non-arm's-length transportation arrangement?
206.60 What are my reporting requirements under a non-arm's-length transportation arrangement?
206.61 What must I do if MMS finds that I have not properly determined value?
206.62 May I ask MMS for valuation guidance?
206.63 What are the quantity and quality bases for royalty settlement?
206.64 What records must I keep and produce?
206.65 Does MMS protect information I provide?

Subpart B—Indian Oil

§ 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). This subpart does not apply to Federal leases, including Federal leases for which revenues are shared with Alaska Native Corporations. This subpart:

(1) Establishes the value of production for royalty purposes consistent with the Indian mineral leasing laws, other applicable laws, and lease terms;

(2) Explains how you as a lessee must calculate the value of production for royalty purposes consistent with applicable statutes and lease terms; and

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

(b) If the regulations in this subpart are inconsistent with a Federal statute, a settlement agreement or written agreement as these terms are defined in this paragraph, or an express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency. For purposes of this paragraph:

(1) ''Settlement agreement'' means a settlement agreement between the United States and a lessee, or between an Indian mineral owner and a lessee that is approved by the United States, resulting from administrative or judicial litigation; and

(2) ''Written agreement'' means a written agreement between the lessee and the MMS Director (and approved by the tribal lessor for tribal leases) establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart.

(c) MMS or Indian tribes may audit, or perform other compliance reviews, and require a lessee to adjust royalty payments and reports.

§ 206.51 What definitions apply to this subpart?

For purposes of this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person.

(1) Ownership or common ownership of more than 50 percent of the voting

securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control in a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership:

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Area means a geographic region in which oil has similar quality and economic characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. 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 in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

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

Condensate means liquid hydrocarbons (generally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results 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 thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Designated area means an area specified by MMS for valuation purposes.

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, and other consideration. Exchange agreements:

(1) May or may not specify prices for the oil involved;

(2) Frequently specify dollar amounts reflecting location, quality, or other differentials;

(3) 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, or in separate agreements; and

(4) May include, but are not limited to, exchanges of produced oil for specific types of oil (e.g., West Texas Intermediate); exchanges of produced oil for other oil at other locations (location trades); exchanges of produced oil for other grades of oil (grade trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields usually are given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective states in which the fields are located.

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 as approved by BLM operations personnel.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services, such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the lessor in order to put the production into marketable condition;

(2) The value of services to put the production into marketable condition, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Indian royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating those payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under an Indian mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products. Depending on the context, ''lease'' may also refer to the land area covered by that authorization.

Lease products means any leased minerals attributable to, originating from, or allocated to Indian leases.

Lessee means any person to whom the United States, a tribe, or individual Indian mineral owner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. ''Lessee'' includes:

(1) Any person who has an interest in a lease (including operating rights owners);

(2) An operator, purchaser, or other person with no lease interest who makes royalty payments to MMS or the lessor on the lessee's behalf; and

(3) All affiliates, including but not limited to a company's production, marketing, and refining arms.

Lessor means an Indian tribe or individual Indian mineral owner that has entered into a lease.

Like-quality oil means oil of a particular oil type.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract or transportation contract typical for disposition of production from the field or area.

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

Net means to reduce the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form MMS–2014.

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day; and

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

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

Oil type means a general classification of oil that has generally similar chemical and physical characteristics. For example, oil types may include classifications such as New Mexico sour, Wyoming sweet, Wyoming asphalt sour, black wax, yellow wax, etc. The MMS will designate oil types for each designated area.

Operating rights owner, also known as a working interest owner, means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease until the operating rights have been transferred from record title (see Bureau of Land Management regulations at 43 CFR 3100.0–5(d)).

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

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does 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.

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

WTI means West Texas Intermediate.

You means a lessee, operator, or other person who pays royalties under this subpart.

§ 206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under §§ 206.56, 206.57, and 206.59. If the arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, you must value the oil sold as the total consideration accruing to the seller. Use this section to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the total consideration established under this section for all contracts for the sale of oil produced from that lease.

(c) If MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, MMS will establish a value based on other relevant matters.

(i) The MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.

(d) You must base value on the highest price that the seller can receive through legally enforceable claims under the oil sales contract. If the seller fails to take proper or timely action to receive prices or benefits to which it is entitled, you must base value on that obtainable price or benefit.

(1) In some cases the seller may apply timely for a price increase or benefit allowed under the oil sales contract, but the purchaser refuses the seller's request. If this occurs, and the seller takes reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits. This paragraph (d)(1) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(2) Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

(e) If you or your affiliate enter(s) into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, then you must value your oil under this paragraph.

(1) If you or your affiliate exchange(s) oil at arm's length for WTI or equivalent

oil at Cushing, Oklahoma, you must value the oil using the NYMEX price, adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under §§ 206.56, 206.57, and 206.59.

(2) If you do not exchange oil for WTI or equivalent oil at Cushing, but exchange it at arm's-length for oil at another location and following the arm's-length exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you must use the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s), adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under §§ 206.56, 206.57, and 206.59.

(3) You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any exchange agreement does not reflect reasonable location or quality differentials, MMS may adjust the differentials you used based on relevant information. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(4) If you or your affiliate exchange(s) your oil at arm's-length, and neither paragraph (e)(1) nor (e)(2) of this section applies, you must request that MMS establish a value for the oil based on relevant matters. After MMS establishes the value, you must report and pay royalties and any late payment interest owed based on that value.

(f) You must also comply with § 206.54.

§ 206.53 How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract?

(a) The unit value of your oil not sold under an arm's-length contract is the volume-weighted average of the gross proceeds paid or received by you or your affiliate, including your refining affiliate, for purchases or sales under arm's-length contracts.

(1) When calculating that unit value, use only purchases or sales of other like-quality oil produced from the field (or the same area if you do not have sufficient arm's-length purchases or sales of oil produced from the field) during the production month.

(2) You may adjust the gross proceeds determined under paragraph (a) of this section for transportation costs under §§ 206.56, 206.57, and 206.59, as applicable, before including those proceeds in the volume-weighted average calculation.

(3) If you have purchases away from the field(s) and cannot calculate a price in the field because you cannot determine the seller's cost of transportation that would be allowed under §§ 206.56, 206.57, and 206.59, you must not include those purchases in your weighted-average calculation.

(b) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Use the applicable gravity adjustment tables published on MMS's Web site (*http://www.mrm.mms.gov*) for the designated area and type of oil produced from the lease to normalize for gravity.

Example to paragraph (b): Assume that a lessee, who owns a refinery and refines the oil produced from the lease at that refinery, purchases like-quality oil from other producers in the same field at arm's-length for use as feedstock in its refinery. Further assume that the oil produced from the lease that is being valued under this section is Wyoming general sour with an API gravity of 23.5°. Assume that the refinery purchases at arm's length oil (all of which must be Wyoming general sour) in the following volumes of the API gravities stated at the prices and locations indicated:

10,000 bbl	24.5°	$34.70/bbl	Purchased in the field.
8,000 bbl	24.0°	$34.00/bbl	Purchased at the refinery after the third-party producer transported it to the refinery, and the lessee does not know the transportation costs.
9,000 bbl	23.0°	$33.25/bbl	Purchased in the field.
4,000 bbl	22.0°	$33.00/bbl	Purchased in the field.

Because the lessee does not know the costs that the seller of the 8,000 bbl incurred to transport that volume to the refinery, that volume will not be included in the volume-weighted average price calculation. Further assume that the gravity adjustment scale provides for a deduction of $.02 per 1⁄10 degree API gravity below 34°. Normalized to 23.5° (the gravity of the oil being valued under this section), the prices of each of the volumes that the refiner purchased that are included in the volume-weighted average calculation are as follows:

10,000 bbl	24.5°	$34.50	(1.0° difference over 23.5° = $.20 deducted).
9,000 bbl	23.0°	$33.35	(0.5° difference under 23.5° = $.10 added).
4,000 bbl	22.0°	$33.30	(1.5° difference under 23.5° = $.30 added).

The volume-weighted average price is ((10,000 bbl × $34.50/bbl) + (9,000 bbl × $33.35/bbl) + (4,000 bbl × $33.30/bbl)) / 23,000 bbl = $33.84/bbl. That price will be the value of the oil produced from the lease valued under this section.

(c) If you demonstrate to MMS's satisfaction that paragraphs (a) and (b) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(d) You must also comply with § 206.54.

§ 206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?

This section applies if your lease either has a major portion provision or provides for the Secretary to determine value. The MMS will presume that all Indian leases have at least one of these provisions unless you demonstrate otherwise.

(a) *When MMS will calculate a major portion value.* The MMS will calculate a major portion value for each designated area for each type of oil produced from that area. The MMS will notify lessees by publishing these values in the **Federal Register** and making them available on MMS's Web site (*http://www.mrm.mms.gov*), as set forth in this section.

(b) *Designated areas.* Each designated area includes all Indian leases in that area. The MMS will publish in the **Federal Register** and make available on MMS's Web site (*http://www.mrm.mms.gov*) a list of the lease number prefixes in each designated area. If in the future there are new area designations, MMS will publish them in the **Federal Register** and make them available on MMS's Web site (*http://*

www.mrm.mms.gov). The designated areas are:

(1) Alabama-Coushatta;
(2) Blackfeet Reservation;
(3) Crow Reservation;
(4) Fort Berthold Reservation;
(5) Fort Peck Reservation;
(6) Jicarilla Apache Reservation;
(7) MMS-designated groups of counties in the State of Oklahoma;
(8) Navajo Reservation;
(9) Southern Ute Reservation;
(10) Ute Mountain Ute Reservation;
(11) Uintah and Ouray Reservation;
(12) Wind River Reservation; and
(13) Any other area that MMS designates.

(c) *Source of information.* The MMS will calculate the major portion value using the values reported as arm's-length sales (which does not include values reported under § 206.52(e)(4)) for production of each oil type from Indian leases in the designated area on Form MMS–2014, Report of Sales and Royalty Remittance. In calculating the major portion value, MMS will not use any values reported under § 206.53.

(d) *Calculation methodology.* (1) The MMS will normalize the reported values to a common quality basis, adjusting for API gravity using applicable posted price gravity adjustment tables. The MMS also will adjust the reported values for reported transportation allowances. The MMS will array the normalized and adjusted values by oil type in order from the highest to the lowest, together with the corresponding volumes reported at those values.

(2) The major portion value is the normalized and adjusted price in the array in paragraph (d)(1) of this section corresponding to 50 percent (by volume) plus one barrel of the oil (starting from the bottom).

(e) *Example of how the methodology works.* (1) For example, assume that reported sales volumes of the same oil type from the Indian leases in a designated area total 100,000 barrels. Further assume that this volume and the corresponding normalized and adjusted reported values are set out in an array as follows:

Reported sales volume (bbl)	Price per bbl normalized and adjusted to 40°	Percentage of volume (Starting from the lowest unit value)
17,109	$25.50	100.000
21,485	25.40	82.891
12,225	25.30	61.486
21,150	25.20	49.181
18,210	25.10	28.031
9,821	25.00	9.821

(2) Under paragraph (d)(2) of this section, MMS would begin at the lowest value in the array and would take away 50,000 barrels (50 percent of the total sales of sweet oil from Indian leases in the designated area). The next barrel higher in the array is valued at $25.30. That value, $25.30/bbl, would be the major portion value. In this example, three lessees must pay the difference between their normalized and adjusted value and the major portion value, namely, the lessees whose normalized and adjusted reported values were $25.00, $25.10 and $25.20. The other three lessees had already reported and paid on a value equal to or greater than the major portion value and, therefore, would not owe additional royalties.

(f) *How to adjust initially reported values and pay any additional royalties due.* (1) On Form MMS–2014, you must initially report and pay the value of production at the value determined under § 206.52 or § 206.53.

(2) The MMS will determine the major portion value by oil type under this section and publish that value in the **Federal Register** and make that value available on MMS's Web site *http://www.mrm.mms.gov*. That value will be at the normalized gravity, and MMS will include the normalized gravity and the adjustment tables on the Web site. The Web site also will include a due date by which you must submit an amended Form MMS–2014 together with any additional royalty due, if you owe additional royalty as a result of the major portion calculation.

(3) You must compare the major portion value to the value that you initially reported on Form MMS–2014, normalized and adjusted for gravity and transportation. If the major portion value is higher than the reported value, normalized and adjusted for gravity and transportation, you must calculate the difference and multiply the volume subject to royalty by the royalty rate. This is the additional royalty owed. You must submit an amended Form MMS–2014 and pay any additional royalty owed by the due date specified on the Web site.

(4) *Example.* For example, assume that the lessee whose normalized and adjusted value in the array is $25.10 produced sweet oil with API gravity of 38.5 degrees. Further assume that the oil was subject to an adjustment scale that provides for a deduction of $.015 per 1⁄10 degree below API gravity of 40°. (This implies that the lessee's original reported value was $24.875 because it was 15⁄10ths below 40°.) When MMS publishes the major portion value on the Web site, normalized to 40°, the lessee would then compare the major portion value ($25.30/bbl) to the normalized and transportation-adjusted reported value ($25.10/bbl). The difference ($0.20/bbl) would be multiplied by the volume subject to royalty times the royalty rate to determine the additional royalty owed.

(g) *Late payment interest.* Late payment interest will not begin to accrue under 30 CFR 218.54 on any underpayment based on any additional amount owed as a result of the higher major portion value until after the due date of your amended Form MMS–2014.

(h) *No changes to major portion value after publication.* The MMS will not change the major portion value after it publishes that value in the Web site publication, unless an administrative or judicial decision requires MMS to make a change.

(i) *Additional reporting guidance.* The MMS may specify, in the MMS *Minerals Revenue Reporter Handbook* or otherwise, additional guidance for reporting under this section and §§ 206.52 and 206.53.

§ 206.55 What are my responsibilities to place production into marketable condition and to market the production?

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

§ 206.56 What transportation allowances apply in determining the value of oil?

(a) If you value oil under § 206.52(a) or (b) based on the gross proceeds that you or your affiliate receive(s) from a sale at a point off the lease, unit, or communitized area where the oil is produced, MMS will allow a deduction, under § 206.57 or § 206.59, as applicable, for the reasonable, actual costs to transport oil from the lease to the point off the lease, unit, or communitized area where the oil is sold at arm's length.

(b) If you value oil under § 206.52(e)(1) through (e)(3) because you or your affiliate enter into one or more arm's-length exchange agreements, MMS will allow a deduction, under § 206.57 or § 206.59, as applicable, for the reasonable, actual costs to transport the oil:

(1) From the lease to a point where oil is given in exchange; and

(2) If oil is not exchanged to Cushing, Oklahoma, from the point where oil is received in exchange to the point where the oil received in exchange is sold.

(c) If you value oil under § 206.53, MMS will allow a deduction, under § 206.57 or § 206.59, as applicable, for the reasonable, actual costs:

(1) That you incur to transport oil that you or your affiliate sell(s), that is included in the weighted-average price calculation, from the lease to the point where the oil is sold; and

(2) That the seller incurs to transport oil that you or your affiliate purchase(s), that is included in the weighted-average cost calculation, from the property where it is produced to the point where you or your affiliate purchase(s) it.

(d) You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(e) *Limits on transportation allowances.* (1) Except as provided in paragraph (e)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under § 206.52 before the deduction of allowances, or 50 percent of each price against which the transportation cost is deducted before the computation of the weighted average price used to calculate value under § 206.53 of this part. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (e)(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 (or the price of particular production used in calculating the weighted average price under § 206.53) to less than 1 percent of the value of the production (or the price used in the weighted average calculation) before the deduction of allowances.

(f) *Allocation of transportation costs.* You must allocate transportation costs among all products produced and transported as provided in §§ 206.56 or 206.57 of this part. You must express transportation allowances for oil as dollars per barrel.

(g) *Liability for additional payments.* (1) If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54.

(2) If you or your affiliate net a transportation allowance rather than report it as a separate entry against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease per sales type code per sales period.

(3) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under paragraph (e)(2) of this section, you must pay interest on the excess allowance amount taken, up to the date you or your affiliate file an exception request that MMS approves. If you do not file an exception request, or if MMS does not approve your request, you must pay interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

§ 206.57 How do I calculate a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(1) and (a)(2) of this section and subject to the limitation in § 206.56(e). You must be able to demonstrate that your or your affiliate's contract is at arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.59, or may limit your allowance to the actual consideration, at MMS's sole discretion.

(2) You must calculate the transportation allowance under § 206.59 if MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) The MMS will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's-length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b) You may deduct any of the actual costs you (including your affiliates) incur for transporting oil allowed under 30 CFR 206.110(b), except that for the cost of carrying inventory as line fill under paragraph (b)(4) of that section you must use the value calculated under § 206.52 or § 206.53, as applicable.

(c) You may not deduct any costs that are not actual costs of transporting oil, including but not limited to, those identified in § 206.110(c).

(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(1) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(2) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(3) You may propose to MMS a cost allocation method on the basis of the values of the products transported. The MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(e) If your arm's-length transportation contract includes both gaseous and liquid g62 products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.

(1) You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(2) You must submit your initial proposal, including all available data, within 3 months after first claiming the

allocated deductions on Form MMS–2014. If you do not submit your proposal, you may be subject to civil penalties.

(f) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, do not separately report the transportation factor as a transportation allowance on Form MMS–2014.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.58 What are my reporting requirements under an arm's-length transportation contract?

You have the burden of demonstrating that your contract is arm's-length. You must submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your Form MMS–2014 on which a transportation allowance is reported.

§ 206.59 How do I calculate a transportation allowance under a non-arm's-length transportation arrangement?

(a) This section applies where you or your affiliate do not have an arm's-length transportation contract, including situations where you or your affiliate provide(s) your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs include the costs allowed under § 206.111, except that:

(1) For the cost of carrying inventory as line fill under paragraph (b)(6)(ii) of that section you must use the value calculated under § 206.52 or § 206.53, as applicable; and

(2) For purposes of paragraphs (h) and (j) of that section, use [THE EFFECTIVE DATE OF THE FINAL RULE] instead of June 1, 2000.

§ 206.60 What are my reporting requirements under a non-arm's-length transportation arrangement?

All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4110, Oil Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.

§ 206.61 What must I do if MMS finds that I have not properly determined value?

(a) If MMS finds 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; and

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

(b) If you are entitled to a credit due to overpayment on Indian leases, see 30 CFR 218.53. The credit will be without interest.

§ 206.62 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 a non-binding determination of the guidance you requested.

§ 206.63 What are the quantity and quality bases for royalty settlement?

(a) You must compute royalties on the quantity and quality of oil as measured at the point of settlement approved by BLM for the lease.

(b) If you determine the value of oil under §§ 206.52, 206.53 or 206.54 of this subpart based on a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for the lease, you must adjust the value for those quantity or quality differences.

(c) You may not deduct from the royalty volume or royalty value actual or theoretical losses incurred before the royalty settlement point unless BLM determines that any actual loss was unavoidable.

§ 206.64 What records must I keep and produce?

(a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the designated area. You must make this data available to MMS, Indian representatives, or other authorized persons.

(b) You must retain all data relevant to the determination of royalty value. Document retention and recordkeeping requirements are found at 30 CFR 207.5, 212.50, and 212.51. The MMS, Indian representatives, or other authorized persons 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 subpart or the lease.

§ 206.65 Does MMS protect information I provide?

The MMS will keep confidential, to the extent allowed under applicable laws and regulations, any data or other information that you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior, 43 CFR part 2.

[FR Doc. 06–1285 Filed 2–10–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–025–FOR]

Montana Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the reopening and extension of the public comment period for a previously announced proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions to, additions of, and deletions of rules about: Definitions; permit application requirements; application processing and public participation; application review, findings, and issuance; permit conditions; permit renewal; performance standards; prospecting permits and notices of intent; bonding and insurance; protection of parks and historic sites; lands where mining is prohibited; inspection and enforcement; civil penalties; small operator assistance program (SOAP); restrictions on employee financial interests; blasters license; and revision of permits.

At the request of three interested parties, we are extending the previously announced public comment period.