

**Supporting Statement for Paperwork Reduction Act Submissions  
Indian Crude Oil Valuation Report, Form MMS-4416  
OMB Control Number 1010-0113**

**A. Justification**

**1. What circumstances make this collection of information necessary?**

On December 20, 1995, Minerals Management Service (MMS) published an Advance Notice of Proposed Rulemaking (60 FR 65610) regarding valuation of oil from Federal and Indian leases. In the notice, we asked all interested parties to submit and/or comment on alternate methodologies for valuing oil production. Additionally, we asked for comments related to Asignificant quantities@ in valuation determinations. The comment period closed March 19, 1996.

Although industry generally had no comment due to pending litigation on this issue, many States and Indian organizations generally believed that the current system is outdated and that a new system based on either the New York Mercantile Exchange (NYMEX) or spot prices would be more appropriate. In response to these concerns, we published a proposed rulemaking on February 12, 1998, revising the current Indian oil valuation regulations (63 FR 7089); the comment period closed on May 13, 1998. This proposed rule added more certainty to valuation of oil produced from Indian lands and eliminated any direct reliance on posted prices.

Most Indian leases include a Amajor portion@ provision which requires value as the highest price paid or offered at the time of production for the major portion of oil production from the same field. To lessen the current reliance on posted prices and to better accommodate the major portion provision, the proposed rule required that royalty value be based on the higher of three different values:

1. A value based on NYMEX futures prices adjusted for location and quality differences;
2. The lessee=s or its affiliate=s gross proceeds adjusted for appropriate transportation costs; and
3. An MMS-calculated major portion value based on prices reported by lessees and purchasers in MMS-designated areas typically corresponding to reservation boundaries.

Because much Indian oil is disposed of under exchange agreements, MMS included specific criteria for these dispositions:

1. If the lessee or its affiliate disposes of production under an exchange agreement and then sells at arm's length the oil it receives in return, royalty value would be the resale price less appropriate transportation costs unless the NYMEX or major portion values are higher;
2. If the lessee or its affiliate disposes of production under an exchange agreement but refines rather than sells the oil it receives in return, royalty value would be the NYMEX value unless the major portion value is higher.

The lessee would initially report royalties based on the higher of the NYMEX value or its gross proceeds. After we calculated the major portion value for the production month, the lessee would revise the initial royalty value if the major portion value is higher.

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

1. A location and/or quality differential between the index pricing point (for example, West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas, or Wyoming Sweet at Guernsey, Wyoming), calculated as the difference between the average monthly spot prices published in an MMS-approved publication for the respective locations; and
2. A rate either published by MMS or contained in the lessee's arm's-length exchange agreement representing location and/or quality differentials between the market center and the boundary of the designated area; or
3. Where oil flows to the market center, and as determined under the existing allowance rules, the actual transportation costs from the designated area to the market center.

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

We would calculate and publish the rate from the market center to the designated area based on specific information we require using a new form, the Indian Crude Oil Valuation Report, Form MMS-4416 (Attachment 1). This form also would aid us in our major portion calculations. Collection of this data allows RMP to fulfill its mission of providing for the fair value of oil for royalty calculation purposes.

We received extensive comments on the February 12, 1998, proposed rulemaking and from several MMS-sponsored workshops. We met with tribal representatives to discuss possible changes to this proposed rulemaking, and we developed a Supplementary Proposed Rulemaking that modifies the proposed rule in four areas:

! Use of spot prices rather than NYMEX futures prices

In response to the February 12, 1998, proposed rule, several commenters objected to the inclusion of NYMEX prices as one of the three values compared to determine royalty value on Indian leases. They argued that NYMEX prices are not attainable by everyone, that use of NYMEX prices effectively moves valuation away from the lease, and that using these prices would add administrative complexity. One comment from an Indian tribe, however, said that use of NYMEX prices was long overdue.

We now propose to use spot, rather than NYMEX, prices for several reasons. First, when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price--the leg between Cushing, Oklahoma, and the market center location.

The supplementary proposed rule states that one of the three comparative values used to determine royalty value is the spot price:

1. For the market center nearest the lease where spot prices are published in an MMS-approved publication;
2. For the crude oil most similar in quality to the oil produced; and
3. For deliveries during the production month.

[The one exception is for leases in the Rocky Mountain Region where the appropriate market center and spot price is at Cushing, Oklahoma. Otherwise, the nearest spot price location would be at Guernsey, Wyoming; we believe that the actual trading that occurs at Guernsey is too limited to result in a reliable spot price.]

We would periodically publish in the Federal Register a list of approved spot price publications based on certain criteria, including but not limited to:

1. Publications buyers and sellers frequently use;
2. Publications frequently mentioned in purchase or sales contracts;
3. Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

4. Publications independent from MMS, other lessors, and lessees.

! Use of average of high daily spot prices rather than average of five highest NYMEX settle prices in a given month

We received a number of comments stating that applying the average of the five highest NYMEX settle prices was unfair and unrealistic and that this represented a price most sellers could not obtain under any circumstances. As a result, in addition to changing from NYMEX to spot prices, the supplementary proposed rule modifies the subset of spot prices to be used. Rather than applying the five highest spot prices in any given month, the supplementary proposed rule requires the use of the average of the daily high spot prices for that month in the selected publication. This should better reflect values generally obtainable, while at the same time fulfilling our trust responsibility to Indian lessors.

! Transportation costs from lease vs. Reservation boundary

A number of comments indicated that we should not limit transportation deductions to only those costs incurred beyond the reservation boundary. The commenters said that there is no requirement that lessees transport oil within a designated area at no cost to the lessor, and that transportation costs should be calculated from the point where oil is measured for sale. As a result, the supplementary proposed rule reflects the permissibility of transportation deductions from the lease rather than the designated area, as well as the reality of exchange agreements whose first transfer point is at the lease or an associated aggregation point.

! Modifications to proposed Form MMS-4416

We received a number of comments that the data requirements for completing proposed Form MMS-4416 were too burdensome and the resultant MMS location differential calculations would not be reliable. We do not agree that the calculation of differentials from Form MMS-4416 data would not be reliable. Further, in April 1998, the Office of Management and Budget (OMB) approved the February 12, 1998, version of proposed Form MMS-4416 for a three-year period. However, we do believe that Form MMS-4416 can be streamlined by eliminating and/or simplifying certain data requirements and clarifying the instructions included with the Form (see Attachment 1). In addition to revising/clarifying the instructions, the supplementary proposed rule proposes to change lessees' submission requirements on Form MMS-4416 to data related to crude oil production from **Indian leases** in designated areas rather than **all** production from designated areas.

These changes **will aid respondents in complying with the requirements of this information collection and still permit** MMS to acquire the information needed to calculate relevant location differentials and meaningful major portion values. As stated earlier, without the Form MMS-4416, proper adjustments to the spot price could not be made. This, in turn, would jeopardize both the royalty payments received by the tribes and our Indian trust responsibility. The

information collected on Form MMS-4416 allows MMS to fulfill its mission of collecting the proper royalty for oil and condensate on Indian lands.

**2. How, by whom, and for what purpose will the information be used?**

The information collection will be on a new form called the Indian Crude Oil Valuation Report, Form MMS-4416. As mentioned in item number one above, we streamlined the proposed Form and clarified the instructions since the original February 12, 1998, proposed rule. The proposal relies on price indexes that lessees may adjust for locational differences between the index pricing point and the lease. Indian lessees and their affiliates would be required to give us specific information from their various oil exchange agreements and sales contracts relating to Indian leases only. Purchasers of oil from designated areas also would be required to submit Form MMS-4416. From this data, we will calculate and publish representative location differentials for lessees= use in reporting royalties in different areas. The purchasers' data will also help us confirm specific major portion values. This process introduces certainty into royalty reporting.

**3. Does the collection of information involve the use of information technology?**

The proposed method of information collection requires each payor to manually complete a Form and mail it to MMS=s Denver office for automated processing. Since MMS proposes only to collect the information annually or when contract changes occur, techniques for electronic transfer of information have not been examined.

**4. Is the information duplicated by any other Federal agency and can similar information be used or modified for this collection?**

The information to be collected is unique and specific to the area of oil valuation. There is no other source of this information available, nor is there any other government agency currently collecting similar information for other purposes that could serve our needs.

**5. What are you doing to minimize the burden on small businesses or other small entities?**

The collection of information will impact most of our approximately 225 individual Indian oil payors as well as purchasers who are not payors. This includes both small businesses as well as the largest of corporations. Currently, there are no special provisions to provide relief for small businesses. However, if a company is small and they engage in very few contracts where oil is exchanged or sold, they have less information to report.

**6. What are the consequences if the collection is not conducted or is conducted less frequently? Are there technical or legal obstacles to reducing the burden?**

The information requested from the companies provides a critical link to estimating the proper valuation of oil from Indian lands. A crucial piece of the valuation equation relies on adjusting the value at a given market center by the proper location adjustment. This adjustment reflects not only a locational difference but also a market adjustment. Those directly involved with the marketing and sale of oil are keenly aware of what these values should be. Additionally, in order to confirm the value of the major portion sold or removed from the Indian lease, information about purchases of oil from the same lease area, including sales prices, is needed. If the information is not collected, it may result in a loss of royalties for Indian and tribal governments.

**7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d) (2)?**

The information requested on Form MMS-4416 is proprietary. To the extent that the law allows, this information will be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552 (or other Federal law). We will keep confidential, under applicable laws and regulations, any and all data submitted that is privileged, confidential, or otherwise exempt. All requests for information about determinations made under this part are to be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

**8. Describe efforts to consult with the public and a representative sample of respondents?**

As mentioned in Item #1, MMS received comments on an earlier version of Form MMS-4416 in the February 12, 1998, proposed rule. These comments are summarized into the three general areas below. Our responses to these comments follow the summaries.

Comment:

The reporting burden associated with proposed Form MMS-4416 is not justified and it should not be implemented. It is very costly for Industry and largely useless.

MMS Response:

We believe the burden associated with the information collection is not severe (see item #12 for specific estimates of burden). Additionally, we believe the information is a critical component of Indian oil royalty valuation. Throughout this document, as well as the Federal Register notices, we have demonstrated the need for Form MMS-4416 and the role it will serve. Further, as noted in the response to Item #1, OMB has approved this information collection.

Comment:

The proposed Form MMS-4416 is onerous and raises many of the same concerns as the proposed Federal Crude Oil Valuation Report, Form MMS-4415. (Note: In response to the originally-proposed Form MMS-4415, OMB said MMS must resubmit the

information collection prior to final Federal oil valuation rulemaking. OMB said MMS must (1) respond to all public comments and explain the choices, and (2) describe how the information would be processed and any statistical methods that would be used.)

MMS Response:

As discussed above, we have streamlined Form MMS-4416, and the information it contains fulfills a critical need in assessing the proper royalty value for Indian leases. There are no other means to obtain this information, and without Form MMS-4416, an element of calculating proper value is lost. We have included the streamlined Form MMS-4416 as Attachment 1. Form MMS-4416 is now more user-friendly, and we have reduced much of the information originally requested. We believe these changes address this concern.

Consistent with the OMB comments regarding Form MMS-4415 for Federal leases, in the final rule we will respond to all public comments and explain our choices regarding the information collection. We also will describe how we will process the information and apply any statistical methods.

Comment:

The proposed Form will only serve its purpose if it is accurate and timely submitted. MMS should assess appropriate penalties when the Form is not submitted.

MMS Response:

Although this comment addresses the issue of compliance more than the specifics of the Form, we agree that information provided on the Form is of no value if it is not completed accurately. We have added language to the bottom of the Form outlining the penalties for false or intentionally erroneous reporting. (See Attachment 1.)

As with the February 12, 1998, proposed rule, this information collection is included in a supplementary proposed rule that specifically asks for comments relating to this collection. We will review and carefully consider any comments received specific to the proposed Form. We will summarize and address such comments in the final rule. Further, we reserve the right to change the Form in response to comments received.

**9. Will payment or gifts be provided to respondents?**

There will be no payment or gift to the respondents.

**10. What assurance of confidentiality is provided to respondents?**

Certain information submitted to MMS to support valuation proposals, including transportation allowances, is exempt from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. We will keep confidential, to the extent possible under applicable laws and regulations, any data submitted that is privileged, confidential, or otherwise exempt. All

requests for information about determinations made under this part are to be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

**11. Does the information collected include any questions of a sensitive nature?**

There are no questions of a sensitive nature on the proposed Form.

**12. What is the estimated reporting and record keeping hour burden of the collection of information?**

MMS estimates the annual reporting and record keeping burden at 2,362.5 hours. There are approximately 225 oil royalty payors on Indian leases. MMS estimates that, on average, a payor will have six exchange agreements or sales contracts which enable the Indian oil royalty payor to dispose of the oil production from the Indian lease(s) for which they are making royalty payments. We estimate that on average a payor will need about one-half hour to gather the needed contract information and fill out Form MMS-4416.

Filing Due to Contract Changes:

We estimate the payor would have to submit the Form twice a year because of contract changes in addition to the required annual filing discussed below.

$$225 \text{ payors} \times 6 \text{ agreements/contracts} \times 2 \text{ hour} \times 2 = 1,350 \text{ burden hours}$$

Filings Due from Non-Payor Purchasers:

MMS estimates that in addition to the 1,350 agreements/contracts submitted by payors, approximately 112 non-payor purchasers of crude oil from Indian leases would also submit half of the 1,350 agreements/contracts as required by proposed 30 CFR ' 206.61 (d)(5). Again, we estimate that the filing of Form MMS-4416 would take one-half hour per report to gather the needed documents and extract the data from individual exchange agreements and sales contracts; we also estimate that a non-payor purchaser would file a report twice a year for each agreement/contract.

$$675 \text{ agreements/contracts} \times 2 \text{ hour} \times 2 = 675 \text{ burden hours}$$

Annual Filing:

To assure Indian lessors, Tribes and Allottees that all payors and non-payor purchasers are complying with these proposed Indian valuation regulations, we will require Form MMS-4416 to be submitted annually for all agreements/contracts involving payors and non-payor purchasers, regardless of whether the agreements/contracts change or not. We estimate that this would require 10 minutes per report to indicate a no-change situation.

$$(1,350 + 675) \text{ agreements/contracts} \times 1/6 \text{ hour} = 337.5 \text{ burden hours}$$

Total Filing Burden:

Total estimated hour burden:  $(1,350 + 675 + 337.5) = 2,362.5$

**13. What is the estimated reporting and record keeping cost burden of the collection of information?**

Based on \$50 per hour, the annual industry cost is estimated to be \$118,125.

$$2,362.5 \text{ total burden hours} \times \$50 = \$118,125$$

We estimate minimal additional expense incurred by respondents or bookkeepers resulting from the collection of information. The information requested is information that payors generally already keep on file for tax and personal accounting purposes. We do not anticipate any additional capital or start-up costs will be needed to provide the requested information. Furthermore, the total operational and service cost of providing the information should also be minimal because this information should already be maintained. Additionally, MMS anticipates a minimal amount of new equipment and supplies will be needed by the payors.

**14. What is the estimated annualized cost to the Federal Government?**

The annualized cost of collecting the information relates to two separate functions, whose costs we estimate as follows:

1. Collection of data: We estimate it will require 160 hours annually to collect, sort, and file the documents. Using an hourly cost of \$50, the annual cost is \$8,000.
2. Analysis of and publication of data: We estimate it will require 1,000 hours to analyze and publish the data annually. This estimate includes the time spent reviewing the data to assist in major portion calculations. Using an hourly cost of \$50, the annual cost of the analysis is \$50,000.

The total estimated cost of collecting and analyzing the data is \$58,000.

**15. Are there any program changes or adjustments requested?**

We have revised the approved information collection, OMB Control No. 1010-0113, according to the supplementary proposed rulemaking and to be responsive to comments received. We estimate the total annual burden for this information collection is approximately 2,362.5 hours, an increase over the current OMB inventory of 1,050 hours.

**16. Are there plans for tabulation and publication of the results of the information collection?**

For the lessee to determine the value of oil under proposed Sec. 206.52(c)(1) of this subpart, the lessee must adjust it for the reasonable location differentials reflecting value differences between the aggregation point and the index pricing point. Part of this adjustment is the location differential between market centers and the aggregation point. We will calculate and publish this component in the Federal Register annually for use in royalty reporting. Our calculations will be based on information furnished by lessees or their affiliates on Form MMS-4416, Indian Crude Oil Valuation Report. A team of MMS analysts will derive representative values for lessees to apply to all leases in a given area. All Indian lessees (or their affiliates as appropriate) would initially submit Form MMS-4416 no later than two months after the effective date of this reporting requirement and by October 31 of each succeeding year. The reporting requirement would take effect before the effective date of the rule. We will publish the calculated location differentials in the Federal Register by the effective date of these regulations and by January 31 of each succeeding year. The lessee should use MMS's first published differentials for all royalty reporting months in the remainder of the calendar year in which they are published, and thereafter use the MMS-published differentials on a calendar year basis.

**17. Is the agency seeking approval to not display the expiration date for OMB approval of the information collection?**

The OMB expiration date will be displayed.

**18. Are there exceptions to the certification statement in Item 19 of Form OMB 83-I?**

The Collection of this information complies with the Certification for Paperwork Reduction Act Submissions of OMB Form 83-I.

**B. Collections of Information Employing Statistical Methods**

This section is not applicable. We will not employ statistical methods in this information collection.