

**Supporting Statement for
Accounting for Comparison (Dual Accounting)¹
(Form MMS-4410)
(OMB Control Number 1010-0104)
(Expiration Date: January 31, 2003)**

A. Justification

1. What circumstances make this collection of information necessary?

The Secretary (Secretary) of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage mineral resources production on Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The product valuation determination process is essential to assuring that Indians receive payment on the proper value of the minerals being removed.

The Minerals Management Service (MMS) performs the royalty management functions for the Secretary. When a company or an individual enters into an Indian (tribal or allotted) lease to explore, develop, produce, and dispose of minerals from Indian lands, that company or individual agrees to pay the Indian tribe or allottee a share (royalty) of the value received from production from the leased lands. Royalty rates are specified in the lease instrument.

The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately.

Indian tribes and allottees receive all royalties generated from their lands. The Indian tribal representatives have expressed concern that the Secretary properly ensures that the correct royalty is received. Failure to collect the data described in this information collection could result in the under-valuation of leased minerals and render it impossible for the Secretary to fulfill her/his statutory and Trust responsibilities for Indian leases.

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Dual accounting is the greater of the following two values:

- (1) The value of gas prior to processing less any applicable allowances, or
- (2) The combined value of residue gas, gas plant products resulting from processing the gas less any applicable allowances, and any drip condensate associated with the

¹ We have revised the name of this information collection from "Certification for Not Performing Accounting for Comparison (Dual Accounting)" to "Accounting for Comparison (Dual Accounting)" to more accurately describe the functions of the revised form.

processed gas recovered downstream of the point of royalty settlement without resorting to processing, less applicable allowances.

On August 10, 1999, MMS published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases" (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian oil and gas leases (except leases on the Osage Indian Reservation). The intent of the new rule was to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. The new rule required lessees to elect to perform either actual dual accounting, under 30 CFR 206.176, or the alternative methodology for dual accounting under 30 CFR 206.173 (Attachment 1).

By "Dear Payor" letter dated December 1, 1999, MMS notified lessees to report the dual accounting election on a monthly basis using new calculation method codes 04, Dual Accounting (actual dual accounting), or 05, Percent of Increase (alternative dual accounting), on the Report of Sales and Royalty Remittance, Form MMS-2014 (OMB Control Number 1010-0022). However, in a reengineering initiative, we redesigned and streamlined Form MMS-2014 effective October 1, 2001 (OMB Control Number 1010-0140). The revised Form MMS-2014 does not contain the dual accounting election information. Therefore, we must collect the dual accounting election information through another mechanism and we have elected to revise Form MMS-4410 to incorporate this function.

The current Form MMS-4410 "Certification for Not Performing Accounting for Comparison (Dual Accounting)," is used only to certify that dual accounting is not required on an Indian lease. This is a one-time certification that remains in effect until there is a change in lease status or ownership. In this information collection request, we are asking approval to revise Form MMS-4410 to clarify the lessee's justification for not performing dual accounting (Part A) and also to include the dual accounting election to perform actual or alternative dual accounting (Part B). The revised Form MMS-4410 (Attachment 2) consolidates the collection of all dual accounting information onto one form. This reduces the burden of submitting the dual accounting elections on a monthly basis on Form MMS-2014 to submitting the information on a much less frequent basis (i.e., Part A is a one-time notification, and Part B is submitted once every 2 years or whenever lessees elect alternative dual accounting).

Part A of the revised Form MMS-4410 requires lessees to identify the MMS-designated areas where the leases are located and provide specific justification for not performing dual accounting. To assist the lessees in identifying the reason(s) for not performing dual accounting, Part A of the revised Form MMS-4410 lists acceptable reasons for not performing dual accounting including: (1) the lease terms do not require dual accounting; (2) none of the gas from the lease is ever processed; (3) gas has a Btu content of 1000 Btu's per cubic foot or less at lease's facility measurement point(s); (4) none of the gas from the lease is processed until after gas flows into a pipeline with an index located in an index zone; and (5) none of the gas from the lease is processed until after gas flows into a mainline pipeline not located in an index zone.

Effective January 2002, elections to perform actual dual accounting or alternative dual accounting will be collected from lessees on the revised Form MMS-4410, Part B, "Election to Perform Actual or Alternative Dual Accounting." A lessee makes an election by checking either the actual or alternative dual accounting box for each MMS-designated area where its leases are located. Part B of the revised Form MMS-4410 also includes lease prefixes within each MMS-designated area to assist lessees in making the appropriate election. The election to perform actual or alternative dual accounting applies to all of a lessee's Indian leases in each MMS-designated area.

The first election to use the alternative dual accounting is effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative dual accounting methodology must remain in effect for 2 calendar years. However, lessees may return to the actual dual accounting method only at the beginning of the next election period or with written approval of MMS and the tribal lessor for tribal leases, and MMS for Indian allotted leases in the MMS-designated area (30 CFR 206.173(a)).

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

Regulations at 30 CFR 206.172 require lessees to certify on Form MMS-4410 that gas production is not processed before it flows into a pipeline with an index but which may be processed later. On Part A of the revised Form MMS-4410, the lessee of an Indian lease will continue to certify that dual accounting is not required for specific leases and will check the box that identifies the reason(s) why dual accounting is not performed.

The regulations at 30 CFR 206.173(a) require that lessees elect to perform either actual or alternative dual accounting and that they make a separate election to use the alternative methodology for dual accounting. In the past, lessees reported the dual accounting election on a monthly basis on the Report of Sales and Royalty Remittance, Form MMS-2014 (OMB Control Number 1010-0022). On Part B of the revised Form MMS-4410, lessees will elect to perform actual or alternative dual accounting for each MMS-designated area where they have gas production from Indian leases. By incorporating Part B in Form MMS-4410 and requiring submission only when a lessee elects to change his/her initial election, we have decreased the annual burden for this information that was originally reported monthly on the Form MMS-2014. We are not submitting a burden change for Form MMS-2014 because this decrease was reflected in our information collection request for revised Form MMS-2014 approved under OMB Control Number 1010-0140 in August 2000.

Information required on the revised Form MMS-4410 includes the lessee's (payor's) name and address; the payor code; contact person; telephone number; MMS lease number; MMS-designated area; a check in one of five boxes identifying the reason why they are not performing dual accounting; a check in either the box identifying actual or alternative dual accounting by MMS-designated area; the effective date (month/year); and signature. The information collected on revised Form MMS-4410 will be used by MMS and tribal personnel to enforce dual accounting requirements in Indian lease terms and in our Indian gas valuation regulations.

Under Section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), certain tribes were given audit authority by the Secretary (30 U.S.C. 1732). The election for dual

accounting affects the amount of royalties due. Tribes given audit authority will use the data contained on the revised Form MMS-4410 for verification purposes. The revised form will allow MMS and the tribes to monitor compliance with the Indian lease terms and the dual accounting requirements under our Indian gas valuation regulations. The tribes urge approval of revised Form MMS-4410 to verify royalties paid under the dual accounting requirements.

3. Does the collection involve the use of information technology, does it reduce the burden, and to what extent?

The use of improved information technology is not applicable for this information collection. The requested information is, for the most part, completed to fulfill specific requirements in our Indian gas valuation regulations. Each individual submittal of Form MMS-4410 differs from any other form depending on the MMS-designated areas where the lessee has Indian gas production and whether dual accounting is performed for specific leases. However, we will offer an electronic copy of this form on our Web site that lessees may print and complete. We will accept computer-generated forms if they contain the same data required on Form MMS-4410. Our Government Paperwork Elimination Act Implementation Plan indicates that we are evaluating the risks and costs of converting this form to electronic submission. We will, if at all feasible, offer an electronic alternative for submitting data by October 2003.

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

The information that Form MMS-4410 collects is unique and known only to the lessee of each Indian lease. No other Federal or State agency collects the same or similar information. The primary information necessary for the evaluation of dual accounting is available only from the lessee because they alone must determine if the conditions are met in order to certify that they do not perform dual accounting for a specific lease. In addition, only the lessee can make an election for actual or alternative dual accounting for its leases located in MMS-designated areas. The use of this information is unique to our mission, and no other adequate information is available to determine royalties under the dual accounting requirements.

5. What is the agency doing to minimize the burden on small businesses or other small entities?

Small organizations are among the potential respondents. MMS has carefully analyzed its requirements to ensure that the information requested is the minimum necessary and places the least possible burden on industry. There are no special reporting provisions or significant economic impacts on small businesses or other small entities. The revised Form MMS-4410 requires the minimal amount of time to make dual accounting elections as well as to certify that for certain leases dual accounting is not performed as required by our Indian gas valuation regulations.

6. What are the consequences to the Federal program or policy activity if the information is not collected or is collected less frequently, and are there any technical or legal obstacles to reducing the burden?

Under the Secretary's Indian trust responsibilities, MMS is responsible for ensuring the proper valuation of gas production from Indian leases. Not collecting this information would prevent the Secretary from discharging his/her duties and could result in loss of mineral revenue to Indian lessors. The regulations at 30 CFR 206.172(b)(1)(ii) require that lessee's certify on Form MMS-4410 that they do not perform dual accounting for specific leases. In addition, the Indian gas valuation regulations at 30 CFR 206.173(a)(1) require lessees to make a dual accounting election. Effective October 1, 2001, Form MMS-2014 eliminated the data element for collecting dual accounting information. Therefore, if MMS did not collect this information on the revised Form MMS-4410, we would not have a means of collecting dual accounting election information. If this information is not collected, we will not be able to ascertain the dual accounting requirements and thus assure that royalties are properly calculated and collected.

7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2) requiring respondents to: (i) report more often than quarterly, (ii) prepare written responses in fewer than 30 days after receipt, (iii) submit more than an original and two copies of any document, or (iv) retain records for more than 3 years?

This collection of information will be conducted in a manner consistent with the guidelines at 5 CFR 1320.5 except for (iv). In accordance with 30 U.S.C. 1713(b), Indian oil and gas records must be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that such records must be maintained for a longer period due to an ongoing audit or investigation.

There are no special circumstances with respect to 5 CFR 1320.5(d)(2)(v) through (viii), as the collection is not a statistical survey and does not use statistical data classification; nor does it include a pledge of confidentiality not supported by statute or regulation or require proprietary, trade secret, or other confidential information not protected by agency procedures.

8. What efforts did the agency make to consult with the public and a representative sample of respondents?

On May 23, 2001, we met with tribes under FOGRMA Section 202, Cooperative Agreements, and provided a draft of the revised Form MMS-4410 for their review. MMS received comments from five tribes and incorporated their comments into the revised Form MMS-4410.

As required in 5 CFR 1320.8(d), MMS published a 60-day review and comment notice on June 6, 2001 in the Federal Register (66 FR 30481) (Attachment 3). MMS received comments from one company:

- Comment: The Federal Register Notice (66 FR 30481) states: "The revised Form MMS-4410 will reduce the lessee's burden of submitting the dual accounting election." This change, however, does little to relieve the burden on the payor. The Form MMS-2014 will be submitted by a payor monthly whether or not there has been a dual accounting change, but in months where there is a dual accounting change, an additional MMS-4410 form will need to be submitted to MMS.

Agency Response: The revised Form MMS-4410 will reduce the payors burden of submitting the dual accounting election on a monthly basis on Form MMS-2014 to submitting the information every 2 years or whenever the payor elects alternative dual accounting at the beginning of any month. The first election to use the alternative methodology is effective from the time of initial election through the end of the following calendar year. Thereafter, each election to use the alternative methodology must remain in effort for 2 calendars years. Payors may return to the actual dual accounting method only at the beginning of the next election period or with written approval of MMS and/or tribal lessor. Currently, payors must report a dual accounting election for each line reported on the Form MMS-2014. The new revised Form MMS-4410 will eliminate the monthly reporting requirements to reporting all dual accounting elections on one form for all MMS-designated areas where the payor reports royalties for their Indian leases.

- Comment: The commenter stated that she hopes that directions for filing will accompany the revised form.

Agency Response: MMS will issue a “Dear Payor” letter to lessees providing background information on dual accounting requirements and informing them of the effective date for filing the revised Form MMS-4410. The form itself has been designed to require very few instructions. Part A is a certification that the lessee is not performing dual accounting and requires an authorized signature and date. To assist lessees, Part A lists all acceptable reasons for not performing dual accounting and asks them to mark those that apply. Part B is also generally self-explanatory. The form lists all MMS-designated areas and asks the lessee to check a box indicating whether he/she will be performing actual or alternative dual accounting in each area where he/she has Indian leases requiring dual accounting.

9. Will payment or gifts be provided to respondents?

No payments or gifts will be provided to respondents.

10. What assurance of confidentiality is provided to respondents?

Commercial or financial information submitted to DOI relative to minerals removed from Indian lands may be proprietary. Trade secrets and proprietary information are protected in accordance with standards established by FOGRMA (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and Departmental regulations (43 CFR 2). The Indian Minerals Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian minerals agreement covered by the Act in the possession of the Department shall be held as privileged proprietary information. Storage of such information and access to it is controlled by strict security measures.

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

None of the information requested is considered sensitive.

12. What is the estimated reporting and recordkeeping "hour" burden?

We estimate that approximately 370 lessees (payors) report gas royalties to MMS for 2,340 Indian leases. These payors generally report on multiple leases on Forms MMS-2014 throughout the year. Since the effective date of the Indian Gas Valuation Rule (January 2000), lessees submitted 480 Forms MMS-4410 certifying that no dual accounting is performed for 760 Indian leases (OMB Control Number 1010-0104). Because the submittal of this current Form MMS-4410 is a one-time certification (unless changes occur), lessees will not be required to resubmit the revised Part A of Form MMS-4410 for these 760 leases unless there is a change in the lease status or ownership or a new lease meets the conditions for not performing dual accounting.

When new leases meet the conditions for not performing dual accounting in the future, the lessees will submit Part A of the revised Form MMS-4410. The fact that we modified the current version of the form does not change the requirement to submit the certifications for not performing dual accounting when any changes occur. Therefore, even though lessees will submit Part A of the revised Form MMS-4410 for changes or new leases, lessees would have submitted these additional forms even if we did not revise the form. We estimate the annual reporting burden to respondents for this information collection on Part A of the revised Form MMS-4410 is 100 hours (25 forms (Part A) x 4 hours per form). Using a cost estimate of \$50 per hour, the annual estimated cost to the respondents is approximately \$5,000.

We estimate the annual reporting burden for Part B of revised Form MMS-4410 is 900 hours (450 forms x 2 hours). Using a cost estimate of \$50 per hour, the annual estimated cost to respondents is approximately \$45,000 (refer to the chart below for a breakdown of the burden by CFR section and paragraph). Lessees will be required to submit only Part B (one page) of the revised form for all MMS-designated areas where they have Indian gas production beginning January 2002. When lessees elect to use alternative dual accounting on Part B of the form, this election must remain in effect for 2 calendar years (unless written approval of MMS/Tribal lessor). Form MMS-4410, Part B, will be submitted when a lessee elects to change their initial election of actual dual accounting to alternative methodology for dual accounting at the beginning of any month.

30 CFR Section	Reporting or Recordkeeping Requirement	Burden Hours Per Response	Annual Number of Responses	Annual Burden Hours
206.172(b)(1)(ii)	Gas production that you certify on Form MMS-4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later. (Part A of revised Form MMS-4410)	4	25	100
206.173(a)(1)	You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting). (Part B of revised Form MMS-4410)	2	450	900

30 CFR Section	Reporting or Recordkeeping Requirement	Burden Hours Per Response	Annual Number of Responses	Annual Burden Hours
206.173(a)(2)	You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. (Part B of revised Form MMS-4410)	See 206.173 (a)(1) above		
206.176(b)	If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section. (Part B of revised Form MMS-4410)	See 206.173 (a)(1) above		
206.176(c)	If you do not perform dual accounting, you must certify to MMS that gas flows into such pipeline before it is processed. (Part A of revised Form MMS-4410)	See 206.172 (b)(1)(ii) above		
TOTAL				1,000

13. What is the estimated reporting and recordkeeping “non-hour” cost burden of the collection of this information, excluding any costs identified in Items 12 & 14?

We have identified no reporting and recordkeeping non-hour cost burdens for this collection of information.

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

It is estimated that the Federal Government will spend 10 hours per month or 120 hours annually to review and analyze the forms received. This estimate includes maintaining a log of the forms filed by payors and filing the forms for possible future audit use. In addition, tribal and MMS auditors will use the information reported on the revised MMS-4410 to ensure compliance with the Indian lease terms and our Indian gas valuation regulations. Using a cost estimate of \$50 per hour, the annually estimated cost to the Federal Government is \$6,000.

15. Are there any program changes or adjustments reported in Items 13 and 14 for Form OMB 83-I?

The currently approved budget in Section 13 for Form MMS-4410 is 2,880 hours. We are requesting 1,000 hours which represents a decrease of 1,880 hours. This reduction is a result of the following actions:

- a. Adjustment to 100 hours--re-estimating the number of annual responses based on experience to date, and
- b. Program change of 900 hours--reporting of new requirements in Part B of revised Form MMS-4410.

There is no cost burden requested in Section 14.

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

The data collected will not be tabulated and published for statistical use.

17. Is the agency seeking approval to not display the expiration date?

No. We will display the expiration date of OMB's approval on Form MMS-4410.

18. Is the agency requesting exceptions to the certification statement in Item 19 of Form OMB 83-I?

To the extent the topics apply to this collection of information, we are not requesting exceptions to the "Certification for Paperwork Reduction Act Submissions."

B. Collections of Information Employing Statistical Methods

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