

American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005
202-682-8240



G. William Frick
Vice President and
General Counsel

August 1, 1997

David S. Guzy
Chief, Rules and Publications Staff
Royalty Management Program
Minerals Management Service
P.O. Box 25165
MS 3101
Denver Federal Center
Denver, Colorado 80225-0165



**American Petroleum Institute Comments on MMS Supplemental
Proposed Rule for Valuation of Crude Oil and Sale of Federal Royalty Oil,
30 CFR Part 243, 62 FR 16116 (April 4, 1997)**

Dear Mr. Guzy:

API welcomes the opportunity to offer written comments on the MMS' July 3, 1997 supplemental proposal. Many of API's over 300 members are engaged in crude oil exploration, production and transportation activities on Federal onshore and offshore lands. These companies account for the vast majority of crude oil royalties paid every year to the Federal Government and have a significant interest in the pending crude oil rulemaking.

Frankly, the supplemental proposal is disappointing. By its own terms, the July 1997 supplemental proposal is limited to a few, mostly small producer-oriented tweaks at the margins of the MMS' January 1997 proposal. Unaddressed altogether are the core issues of the rulemaking. As API's May 27, 1997 comments show, the MMS proposal raises a constellation of procedural, statutory authority, and workability issues which would be unaffected by the minor adjustments contemplated in the supplemental proposal.

Unaddressed is the threshold question of why the existing regulations cannot be tuned instead of scrapped in favor of a radically different and unworkable scheme. Unaddressed is the scope of the information required under proposed Form MMS-4415. Unaddressed is the unworkability of the proposal because of its reliance on NYMEX or Alaska North Slope spot prices and unduly limited adjustments. Unaddressed is the

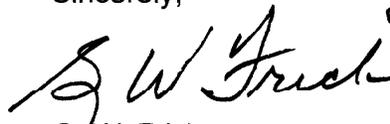
lawfulness of MMS extending royalty obligations to include an uncredited duty to market production. And unaddressed is the appropriateness of an interim final rule when such radical changes in the regulations involve such substantial changes in royalty management administration.

While it is true, as the supplemental proposal asserts, that many small producer issues were raised at the MMS' April 15 and 17, 1997 public meetings, many other issues were raised by representatives of large and small producers too. In addition, the wide range of issues raised in API's written comments are reflected in many of the other written comments submitted to the MMS and a part of the voluminous administrative record.

On the positive side, the supplemental proposal recognizes that the mere purchase of oil by a lessee does not by itself render a lessee's sales of crude oil non-arm's-length. This recognition would help small lessees avoid some of the complexity and arbitrariness of an NYMEX-based scheme. It also begins to recognize API's more expansive suggestion that MMS should tune up its existing benchmark system, rather than abandon it altogether. MMS should now amend the proposal further to more fully utilize arm's-length contracts in the benchmark system. The MMS should also continue to explore a comprehensive royalty-in-kind program which could avert valuation problems altogether.

In sum, it is commendable that the MMS is trying to address some of the issues in the rulemaking. However, the core problems of the January 1997 proposal remain. The July 1997 supplemental proposal is no substitute for publishing a fundamentally recast proposal addressing the wide range of issues raised by the whole universe of stakeholders and reflected in the administrative record for this rulemaking.

Sincerely,



G. W. Frick