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April 7, 1998

**Via Facsimile and U.S. Mail**

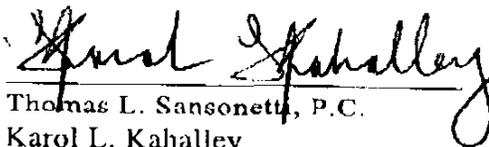
Mr. David S. Guzy  
Chief, Rules and Publications Staff  
Royalty Management Program  
Minerals Management Service  
P.O. Box 25165  
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Denver, CO. 80225-0165

**Re: Comments for Supplementary Proposed Rules for Establishing Oil Value  
for Royalty Due on Federal Leases, 30 CFR Part 206**

Dear Mr. Guzy:

Calcasieu Refining Co., the Gary-Williams Energy Corporation, Giant Refining Company, Placid Refining Company, and Wyoming Refining Company (collectively the "Small Refiner Companies") respectfully submit the enclosed comments on the Minerals Management Service's proposed rules concerning the determination of royalty value for oil produced from federal oil and gas leases, 63 Fed. Reg. 6113 (February 6, 1998). If you have any questions, please contact Karol Kahalley at 303-290-1634 or Tom Sansonetti at 307-778-4235

Sincerely,



Thomas L. Sansonetti, P.C.  
Karol L. Kahalley  
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Attorneys for

CALCASIEU REFINING COMPANY

GARY-WILLIAMS ENERGY CORPORATION

GIANT REFINING COMPANY

PLACID REFINING COMPANY

WYOMING REFINING COMPANY

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Dear Mr. Guzy:

Calcasieu Refining Co., the Gary-Williams Energy Corporation, Giant Refining Company, Placid Refining Company, and Wyoming Refining Company (collectively the "Small Refiner Companies") submit these comments on the Minerals Management Service's (MMS) proposed rules concerning the determination of royalty value for oil produced from federal oil and gas leases, 63 Fed. Reg. 6113 (February 6, 1998).

**BACKGROUND AND SUMMARY OF THE SMALL REFINER COMPANIES' POSITION**

All of the Small Refiner Companies are or have been participants in the royalty-in-kind (RIK) program. The RIK program has been very important in helping small and independent refineries, such as the Small Refiner Companies, meet their needs for a dependable and affordable crude oil supply. Therefore, the Small Refiner Companies wish to emphasize that the program should be maintained and strengthened.

As participants in the RIK program, the Small Refiner Companies are acutely aware of current inadequacies in the valuation rules and procedures MMS employs under 30 CFR parts 206 and 208. In particular, the RIK program is in great jeopardy because of MMS' interpretation of the current rules--that undervaluations of RIK oil should be covered by the purchaser of RIK oil rather than the producer. In fact, Wyoming Refining Company is presently involved in litigation with MMS over this

very issue. Other Small Refiner Companies could face similar litigation with MMS if MMS persists in its interpretation of the current rules. If the uncertainty that plagues the current program continues, the Small Refiner Companies ultimately will be forced out of the RIK program altogether.

MMS has recognized that the current rules are "onerous to the producers and create risk for the small refiners." See 62 Fed. Reg. 3742 (January 24, 1997). However, the Small Refiner Companies believe that future problems over RIK valuations can be avoided if certain goals are achieved in the new rule. Valuation of RIK oil should be fair to the purchaser and ensure that the federal government receives a fair return. However, the Small Refiner Companies are not only interested in making sure that the value of RIK oil is fairly established, but also in who will be accountable for its accuracy. Some of the goals that the Small Refiner Companies would like to see achieved in the new rule include:

1. Ensuring that small refiners have access to long term affordable crude oil supplies.
2. Removing the threat of retroactive pricing due to post-sale audits by having a definite oil price and by having the purchaser of RIK oil forever meet its financial obligations to the federal government when the invoice for delivery of the oil has been paid.
3. Placing the ultimate responsibility for any errors in reporting the value of RIK oil to MMS on the lessee-producer of that oil rather than on the purchaser.
4. Simplifying valuation methods and reducing administrative burdens on industry and the agency.

Should the above goals be met in the language of the proposed rule, the Small Refiner Companies will support its adoption. However, the Small Refiner Companies believe that MMS' formulaic approach is not the best means of achieving MMS' goal of obtaining market value for the federal government's royalty oil. The better solution is to abandon the bureaucratic and administratively burdensome approach taken in the proposed rulemaking in favor of the streamlined and simplified program currently proposed by Congressman Thornberry and others in the Federal Oil and Gas Royalty Certainty Act of 1998 (H. R. 3334).

#### **COMMENTS ON MMS' DECISION TO EXCLUDE 30 C.F.R. PART 208 FROM THE CURRENT RULEMAKING**

**"In the January 1997 proposed rule, MMS proposed to modify the RIK valuation procedures to tie them directly to MMS's proposed index pricing provisions less a location/quality differential specified**

**in the RIK contract. MMS has decided not to proceed with this approach. Instead, MMS is considering establishing future RIK pricing terms directly within the contracts it writes with RIK program participants. MMS's goal is still to achieve pricing certainty in RIK transactions. But because of its revised plans, MMS is dropping its proposed January 1997 change to 30 CFR 208.4(b)(2)."**

Comment:

As stated above, the Small Refiner Companies' overriding concern with any proposed rulemaking or other proposed changes to the RIK program is that such changes must create price certainty for participants in the RIK program. Under MMS' interpretation of the current rules governing the RIK program at 30 CFR 208, and the corresponding valuation provisions of 30 CFR 206, small refiners are subject to substantial risk from the threat of indefinite, retroactive price increases based on future audits by MMS. Under such circumstances, the small refiner can have no confidence in the price billed by MMS and paid by the refiner under the terms of the RIK contract. MMS' currently asserted right to retroactive price adjustments based on future audits deprives small refiners of any form of predictability or stability in contracting for royalty oil. This approach puts small refiners at substantial financial risk when MMS redetermines a new price for RIK oil years after the oil has been paid for and exchanged by the RIK purchaser on the basis of the originally invoiced price. Under the present system each and every purchase of RIK oil creates a contingent liability on the books of the small refiner.

Furthermore, each small refiner has a contract with MMS for the purchase of RIK oil. Those contracts provide small refiners with the option of canceling oil purchases from MMS when the price determined by MMS proves to be uneconomical for the small refiner. By making later price adjustments, MMS effectively strips small refiners of their contractual right to terminate uneconomic purchases. Finally, subjecting small refiners to this type of financial uncertainty thwarts the purposes of the Mineral Leasing Act's Small Refinery Program which was intended to preserve the ability of small refiners to compete against vertically integrated oil companies.

MMS' decision to establish future RIK pricing terms directly within the contracts it writes with RIK program participants could be a means to achieve price certainty. However, until new part 208 rules are created which clarify that contractual agreements will, in fact, result in price certainty, program participants remain susceptible to MMS' interpretation of the current rules.

In addition, because MMS chose not to address changes in part 208 in this latest proposed rule, the exact nature of the interconnection between parts 206 and 208 remains unclear. Although MMS indicates that valuation for part 208 participants will occur through separate contract negotiations, it is unclear whether

RIK purchasers could still be held liable for audits and undervaluations conducted under part 206. Again, if MMS' stated goal--"to achieve pricing certainty in RIK transactions"--is anything more than illusive, MMS must proceed to immediately promulgate part 208 rules.

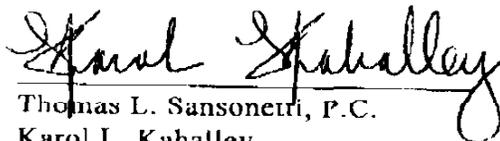
**COMMENTS ON MMS' PROPOSED RULE CHANGES TO 30 CFR PART 206**

**"After reviewing over 2,600 pages of comments . . . MMS has decided to issue another supplementary proposed rule. This rule maintains the concept of 'index' pricing but allows for the use of indicies [sic] closer to the lease and recognizes geographical differences in the marketplace."**

Comments:

MMS' efforts to meet the needs of the varied constituents participating in this rulemaking has resulted in a proposed rule which poses six methods for valuing crude oil (arm's-length contracts and five complex alternatives). Unfortunately, this second supplementary rulemaking keeps much of what was wrong with the previous rulemakings, but adds layers of complexity to create a program more burdensome to the agency and to industry than the existing system.

Sincerely,



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