

**Supporting Statement for
30 CFR Part 206, Subpart B, Indian Oil
(Form MMS-4416, Indian Crude Oil Valuation Report)
(OMB Control Number 1010-0113)
(Expiration Date: February 28, 2003)**

A. Justification

1. What circumstances make this collection of information necessary?

The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires the Secretary to "establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner" (Attachment 1). To accomplish these tasks more effectively, MMS published a proposed rule in the *Federal Register* on February 12, 1998 (63 FR 7089) (Attachment 2) and a supplementary proposed rule on January 5, 2000 (65 FR 403) (Attachment 3). The proposed rules add more certainty to the valuation of oil produced from Indian lands and eliminate any direct reliance on posted prices by, among other provisions, requiring Indian lessees and purchasers to submit certain contract information to MMS.

MMS awaited the Solicitor General's approval of the appeal in the Federal Energy Regulatory Commission 636 case regarding duty to market before publishing a final rule. Now MMS is announcing in the *Federal Register* dates, places, and times for workshops on issues related to the existing rules adopted in March 2000 governing the valuation for royalty purposes of crude oil produced from Federal leases. The workshops will address, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed rule on Indian oil valuation, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS is reopening the comment period for 60 days on the proposed rule on Indian oil valuation so it can include in the record any relevant comments received. MMS can then consider those comments as it proceeds with the Indian oil valuation rule.

Since OMB's approval for this information collection request expires on February 28, 2003, we are seeking OMB approval to renew these reporting requirements until a final rule is published.

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

The supplementary proposed rule at 30 CFR § 206.52 explains how lessees must determine the value of oil produced from Indian leases. Lessees must initially report the higher of two values on Form MMS-2014, Report of Sales and Royalty Remittance, as follows: (1) the gross proceeds under their arm's-length contract or (2) a value based on a published spot price adjusted for quality and location differentials. If appropriate, MMS will calculate and publish a major portion value based on the initial Form MMS-2014 reports. (The rule provides that major portion cannot be performed unless more than 25 percent of the production from the designated area is reported as sold arm's-length.) If the major portion value is higher than what lessees initially reported, they would have to file a revised Form MMS-2014 and pay additional royalties.

To calculate the adjusted spot value, lessees may adjust for location and quality differences between the pricing point and the aggregation point. MMS would use the information submitted by lessees on the proposed Form MMS-4416, Indian Crude Oil Valuation Report (Attachment 4), to calculate and publish the location/quality differentials for lessees to use. Lessees and their affiliates, as well as oil and gas purchasers, would be required to submit information on the location/quality differentials included in their various oil exchange agreements and sales contracts on Form MMS-4416. MMS and Indian personnel would use data from oil purchasers to verify royalty values and differentials initially reported on the Form MMS-2014. If appropriate, we will use these verified values to calculate the major portion value by designated area.

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

MMS will provide an electronic version of this form on our Internet web site. Respondents may print this form, then complete and submit it to MMS. Our Government Paperwork Elimination Act Plan indicates that we will evaluate this form for full conversion at some future date if the rule is finalized as written. It is estimated 15 percent of these forms would be submitted electronically.

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 Indian 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 is the agency doing to minimize the burden on small businesses or other small entities?

This collection of information will impact most of our approximately 225 individual Indian oil payors, as well as purchasers who are not payors. This includes small businesses as well as large corporations. Currently, there are no special provisions to provide relief for small businesses. However, MMS has a long-standing policy to restrict the amount of information collected to the minimum necessary to accomplish our mission and fulfill our Indian trust responsibilities. In addition, small companies generally engage in few contracts that will have to be reported on Form MMS-4416. Therefore, they will have less information to report than the larger corporations.

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?

The information requested provides a critical link to estimating the proper value of oil from Indian leases. 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 location differential but also a quality adjustment. The proposed rule provides that major portion cannot be performed unless more than 25 percent of the production from the designated area is valued and reported as sold arm's-length. In order to determine if MMS should calculate and publish a major portion value, we need the information about purchases of oil from the designated area. MMS also needs the information to adjust the reported arm's-length sales values in the major portion array for location differentials. If the information is not collected, it may result in a loss of royalties for Indian lessors.

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 is consistent with the provisions at 5 CFR § 1320.5(d)(2)(i) through (iv) except for (iv). In accordance with 30 U.S.C. 1713(b), Indian oil and gas records must be maintained 6 years after the records are generated.

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 classifications; 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?

As required in 5 CFR § 1320.8(d), MMS published in the *Federal Register* a 60-day review and comment notice on December 9, 2002 (67 FR 72972) (Attachment 5). We received no

comments in response to this notice.

Also, as noted earlier, MMS issued proposed and supplementary proposed rules on Indian oil valuation. We received extensive comments on those rules and responded to them in the previous information collection submission. Also, as stated in item 1, MMS is reopening the comment period on the Indian oil valuation proposed rule so it can include in the record any relevant comments received.

9. Will payments or gifts be provided to respondents?

No payments or gifts will be provided to the respondents.

10. What assurance of confidentiality is provided to respondents?

Commercial or financial information submitted to DOI relative to minerals removed from Federal and Indian leases may be proprietary. Trade secrets and proprietary information are protected in accordance with standards established by FOGRMA, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and Department 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 DOI 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?

The annual reporting burden is 2,363 hours. We expect approximately 6,075 responses from 337 payors/purchasers to submit the required information. The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Using an average cost of \$50 per hour, the total cost to respondents is \$118,150. There are no additional recordkeeping costs. Refer to the chart below for a breakdown of the burden.

| Proposed 30 CFR Section | Reporting Requirement | Burden Hours per Response | Annual Number of Responses | Annual Burden Hours |
|--------------------------------|--|----------------------------------|-----------------------------------|----------------------------|
| § 206.61 (d)(5) | You must submit information on Form MMS-4416 related to all of your crude oil production from Indian leases. You must initially submit Form MMS-4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this | .1666 | 2,025 ¹ | 337.5 |

| Proposed 30 CFR Section | Reporting Requirement | Burden Hours per Response | Annual Number of Responses | Annual Burden Hours |
|-------------------------------|---|---------------------------------|----------------------------------|---------------------------|
| | <p>regulation takes effect], and by October 31 of each succeeding year.</p> <p>In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas likewise are subject to the requirements of this paragraph (d)(5).</p> | .5 | 4,050 ² | 2,025 |
| Total | | | 6,075 | 2,363 |

¹ 1,350 payor-purchaser agreements or contracts plus 675 non-payor-purchaser agreements or contracts.

² 225 payor-purchasers x 6 agreements or contracts per payor x 1/2 hour per submission x 2 submissions per year plus 675 agreements or contracts submitted by non-payor-purchasers x 1/2 hour per submission x 2 submissions per year.

(NOTE: The OMB-approved burden hours for this ICR were reduced to 1 hour during the inactive period of this proposed rule. We will increase the burden hours to the approved level prior to publication of a final rule.)

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 and 14?

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

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

MMS estimates processing Forms MMS-4416 will require 160 hours annually to collect, sort, and file the forms and 1,000 hours to analyze and publish the data gathered on the forms for a total of 1,160 hours. The total annualized cost to the Federal Government is approximately \$58,000 (1,160 hours x \$50 per hour).

15. Is the agency requesting any program changes or adjustments reported in Items 13 and 14 of the Form OMB 83-I?

The current OMB inventory of 1 burden hour is unchanged. When the final rule is published, MMS will submit Form OMB 83-C to increase the burden hours to reflect the approved burden of 2,363 hours.

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

For an Indian lessee to determine the value of oil under proposed 30 CFR § 206.52, the lessee must make adjustments for the reasonable location differentials reflecting value differences between the aggregation point and the 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. A team of MMS analysts will derive representative values for lessees to apply to all leases in a given area. All lessees (or their affiliates as appropriate) reporting royalties for Indian leases would initially submit Form MMS-4416 no later than 2 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?

No. We will display the expiration date of OMB's approval on Form MMS-4416.

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 of 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.