DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; notice of initial regulatory flexibility analysis.

SUMMARY: Under the requirements of the Regulatory Flexibility Act, MMS is publishing an Initial Regulatory Flexibility Analysis (IRFA) for a supplementary proposed rule on establishing oil value for royalty due on Indian leases. Our purpose is to aid the public in commenting on the small business impact of this proposed rulemaking.

DATES: Your written comments must be submitted on or before October 30, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, CO 80225. You may also comment via the Internet to RMP.comments@mms.gov.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: RIN 1010–AC24 and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, or e-mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: This notice supplements MMS's February 12, 1998, notice of proposed rulemaking (63 FR 7089) and the January 5, 2000, supplementary proposed rule (65 FR 403) that were published in the **Federal Register**. MMS is proposing amendments to its regulations for establishing the value for royalty purposes of oil produced from Indian leases. The proposed amendments also would establish a new form for collecting value and value differential data. These amendments are intended to simplify and improve the regulations by decreasing reliance on oil posted prices and use more publicly available information. MMS received written comments from interested parties on both proposals. During the comment period for the proposed rulemaking, MMS held workshops in Albuquerque, New Mexico, on March 26, 1998, and Lakewood, Colorado, on April 1, 1998, to receive further comment. During the comment period for the supplementary proposed rule, MMS held a similar workshop in Lakewood, Colorado, on February 8, 2000.

MMS's notice of February 12, 1998 (63 FR 7097) did not include an IRFA under the requirements of the Regulatory Flexibility Act (5 U.S.C. 603) because MMS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

In the January 5, 2000, supplementary proposed rule, MMS stated that the proposal would have a significant economic impact on 173 small businesses and proposed further modifications that would to some extent mitigate the impact on small businesses from the proposed amendments under the February 12, 1998, rule (65 FR 410).

MMS afforded opportunities for public comment in the February 12, 1998, and January 5, 2000, proposals. MMS received no comments concerning the impacts of this rulemaking on small entities during the comment periods for the proposed and supplementary proposed rules or at the three workshops.

Upon further analysis, MMS has determined that the proposed rule would affect a larger number of small businesses. The proposal, in addition to revising the oil value for royalty due on Indian leases for companies who pay royalties, also places a reporting requirement on non-payor purchasers of oil produced from Indian leases.

MMS determined that the proposed rule would have a significant impact on a substantial number of small businesses. Accordingly, MMS is publishing this notice with the analysis to provide further information and opportunity for public comment on the small business impact of this rulemaking. After the close of the 30-day comment period, MMS will prepare a final rule and address all comments received.

The Executive Summary of the IRFA is included as Attachment 1, followed by the analysis, which is included in its entirety as Attachment 2 to this notice.

Dated: September 21, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

Attachment 1—Indian Oil Valuation: Supplementary Proposed Rule—Initial Regulatory Flexibility Analysis; Executive Summary

Through a series of rulemakings that began on December 20, 1995, the Minerals Management Service (MMS) proposes to establish new royalty valuation rules for oil produced from Indian lands. MMS issued a proposed rule on February 12, 1998, followed by a supplementary proposed rule on January 5, 2000. This latest proposal would establish royalty value based on the highest of three separate valuation methods:

—The reported gross proceeds from an arm's-length sale.

—A location- and quality-adjusted spot price for the market center nearest the producing lease. This spot price is for the oil most similar in quality to that of the lease production, and for the month of delivery concurrent with the production month.

—The MMS-calculated "major portion" price calculated at the 75% level. The monthly major portion value would be calculated by arraying sales and associated volumes from lowest price to highest, and applying the price associated with the sale where accumulated volumes exceed 75 percent of the total.

MMS estimates that there would be significant impacts on a substantial number of small businesses (less than 500 employees by the U.S. Small Business Administration criteria), as a percentage of all Indian lease payors, as well as on some large businesses. MMS estimates there are approximately 166 small business royalty payors on Indian lands. In addition to these payors, MMS estimates that 83 additional non-lessee small businesses would be impacted by the proposed rule. These 83 small businesses would have an additional cost under the proposed rule because they must submit Form MMS–4416 as non-payor purchasers of oil produced from Indian leases.

For each of the 166 small business royalty payors, MMS estimates the average impact as:

$16,134 per payor for the first year
$13,634 each year thereafter

For each of the 83 non-lessee small businesses, the estimated average impact is: $3,350 each year.

Because of MMS's trust responsibility there were very few alternatives other than the provisions within the proposed rule. Throughout the rulemaking process, MMS solicited comments and held public workshops. MMS consulted with the affected tribal and allottee representatives on several occasions and discussed in depth the merits and provisions of several valuation alternatives. MMS, tribal, and allottee representatives believe that the proposed rule reflects the best method to ensure that Indian lessors receive fair market value for their oil resources.

Attachment 2—Indian Oil Valuation: Supplementary Proposed Rule—Initial Regulatory Flexibility Analysis

Background

On December 20, 1995, the Minerals Management Service (MMS) published an Advance Notice of Proposed Rulemaking regarding valuation of oil from Federal and Indian leases. In the notice, MMS asked all interested parties to submit or comment on alternate methodologies for valuing oil production. Industry generally had no comment on this issue, but many States and Indian organizations provided comments. They believed that the current valuation system is outdated and that a new system based on either the New York Mercantile Exchange or spot prices is more appropriate.

In response to feedback from the Indian community, MMS issued a Notice of Proposed Rulemaking revising the current Indian oil valuation regulations on February 12, 1998 (63 FR 7089). The intent of our February 12, 1998, proposed rulemaking was to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address certain terms unique to Indian leases—specifically, the ''major portion'' provision. Most Indian leases include this provision, which provides that value for royalty purposes, in the discretion of the Secretary, may be the highest price paid or offered at the time of production for the major portion of oil production from the same field.

The February 1998 proposed rule would have required royalty value to be based on the higher of three different values:

- A value based on the average of the five highest New York Mercantile Exchange (NYMEX) futures prices for the month adjusted for location and quality differences.
- The lessee's or its affiliate's gross proceeds adjusted for appropriate transportation costs.
- A MMS-calculated major portion value based on prices reported by lessees and purchasers in MMS-designated areas typically corresponding to reservation boundaries. The monthly major portion value would be calculated by arraying sales and associated volumes from lowest price to highest, and applying the price associated with the sale where accumulated volumes exceed 75 percent of the total. For example, assume four sales were reported on a reservation for the following volumes and prices:

	Volume (bbls)	Price ($/bbl)
Sale #1	2,000	10.00
Sale #2	2,000	12.00
Sale #3	4,000	15.00
Sale #4	2,000	18.00
Total	10,000	....

The major portion price would be $15.00 (the price at which accumulated volumes exceed 75% of the total production). MMS would require the two payors who reported less than the $15.00 major portion price to pay the difference for their reported volumes ($5.00/bbl and $3.00/bbl respectively).

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

If * * *	Then * * *
The lessee or its affiliate disposed of production under an exchange agreement and then sold at arm's length the oil it received in return,	Royalty value would have been the resale price less appropriate transportation costs unless the NYMEX or major portion values were higher.
The lessee or its affiliate disposed of production under an exchange agreement but refined rather than sold the oil it received in return,	Royalty value would have been the NYMEX value unless the major portion value were higher.

The lessee initially would have reported royalties based on the higher of the NYMEX value or its gross proceeds. After MMS performed its major portion calculation for the production month, the lessee would have revised its initial royalty value if the major portion value were higher.

In the February 12, 1998, proposal, adjustments for location and quality against the index values were limited to these components:

1. A location and/or quality differential between the representative oil at the index pricing point (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;

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 took its production directly to its own refinery and the movement in no way approximated movement to a market center.

MMS would calculate and publish the rate from the market center to the designated area based on specific information it would collect on a new form: Indian Crude Oil Valuation Report (Form MMS–4416). This form would also help MMS confirm its major portion calculations. Collection of this data would allow the Royalty Management Program to fulfill its mission of providing for the fair value of oil for royalty calculation purposes.

Provisions of the Supplementary Proposed Rule

MMS received extensive written comments on its February 12, 1998, proposal, as well as further comments from the two subsequent workshops it held in Albuquerque, New Mexico, on March 26, 1998, and Lakewood, Colorado, on April 1, 1998. As a result, MMS issued a supplementary proposed rulemaking dated January 5, 2000 (65 FR 403). This proposed rule made modifications to the February 12, 1998, proposal in four areas:

A. Use of Spot Prices vs. NYMEX Futures Prices

In response to the February 12, 1998, proposed rule, several parties 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 the use of NYMEX prices was long overdue.

In the January 5, 2000, supplementary proposed rule, MMS proposed to use spot rather than NYMEX prices for several reasons. First, spot prices are more location-specific, and we believe that 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 for:

• The market center nearest your lease where spot prices are published in an MMS-approved publication;

• The crude oil most similar in quality to your oil; and

• Deliveries during the production month.

One exception is that for leases in the Rocky Mountain Region, the appropriate market center and spot price would be at Cushing, Oklahoma. This is due to the fact that the otherwise-nearest spot price location is at Guernsey, Wyoming, where we believe actual trading is too limited to result in a reliable spot price.

B. Use of Average of High Daily Spot Prices Rather Than Average of Five Highest NYMEX Settle Prices in a Given Month

MMS received a number of comments that said 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. We agreed with this comment and, in addition to changing from NYMEX to spot prices, have modified the subset of spot prices to be used. Rather than applying the five highest spot prices in any given month, the January 5, 2000, rulemaking proposes to use 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 maintaining consistency with the major portion provision of Indian leases calling for the highest price paid for a major portion of production in the field or area.

C. Transportation Costs From Lease vs. Reservation Boundary

A number of comments said that MMS should not limit transportation deductions to only those costs incurred beyond the reservation boundary. The commenting parties 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 royalty calculation purposes. We agreed with these comments and proposed a change to reflect 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.

D. Modifications to Proposed Form MMS—4416

MMS received a number of comments that the data requirements for completing proposed Form MMS–4416 were too burdensome and the resultant MMS calculations of location differentials would not be reliable. While we do not agree with the latter comment, we agreed that Form MMS–4416 could be streamlined by eliminating or simplifying certain data requirements and clarifying the instructions included with the form. The Office of Management and Budget (OMB) approved the Form MMS–4416 when MMS submitted it with the February 12, 1998, proposal. However, we revised and clarified the instructions, and proposed to change its submission requirements. Only crude oil production from *Indian leases* in designated areas, rather than *all* production from designated areas, must be reported. This change would minimize the administrative burden of the information collection while still permitting MMS to acquire the information necessary to calculate relevant location differentials and to assist MMS in validating its major portion values. OMB approved this ''streamlined'' version of Form MMS–4416 on February 22, 2000.

Costs and Benefits

Summarized below are the estimated costs and benefits of this rule to payors on Indian leases, including small businesses. The costs are segregated into two categories—those costs that would be incurred in the first year after this rule is effective and those costs that would be incurred each year thereafter.

In 1997, MMS records indicated there were approximately 220 oil and condensate payors on Indian lands. The following chart provides the total estimated financial impact on these payors. The subsequent charts provide detailed impact estimates for small businesses. Explanations of each cost and benefit category follow the charts.

TOTAL IMPACT—ALL 220 PAYORS ON INDIAN LEASES

	First year	Subsequent years
1. Cost—Additional Royalty Payments	$<4,624,944>	$<4,624,944>
2. Cost—Equipment/Compliance	<1,650,000>	<1,100,000>
3. Cost—Completing Form MMS–4416	<77,000>	<77,000>
4. Cost—Filing new 2014 with Major Portion	<34,125>	<34,125>
5. Benefit—Administrative Savings	1,016,200	1,016,200
Net Costs to Industry	<5,369,869>	<4,819,869>

Of the 220 oil and condensate payors on Indian lands, 166 would be considered small businesses under the U.S. Small Business Administration (SBA) criteria. The SBA considers a business in the oil and gas industry small if it employs less than 500 people. The total impact on this subset of payors is shown below:

TOTAL IMPACT ON 166 SMALL BUSINESS PAYORS ON INDIAN LEASES

	First year	Subsequent years
1. Cost—Additional Royalty Payments	$<1,349,438>	$<1,349,438>
2. Cost—Equipment/Compliance	<1,245,000>	<830,000>
3. Cost—Completing Form MMS–4416	<58,100>	<58,100>
4. Cost—Filing new 2014 with Major Portion	<25,749>	<25,749>
5. Benefit—Administrative Savings	0	0
Net Costs to Small Business Payors	<2,678,287>	<2,263,287>

For each of the 166 small businesses, MMS estimated individual impacts representing averages applied over the entire group. Actual individual impacts may vary significantly from those outlined below.

SMALL BUSINESS IMPACT CALCULATED ON A PER-PAYOR BASIS

	First year	Subsequent years
1. Cost—Additional Royalty Payments	$<8,129>	$<8,129>
2. Cost—Equipment/Compliance	<7,500>	<5,000>
3. Cost—Completing Form MMS–4416	<350>	<350>
4. Cost—Filing new 2014 with Major Portion	<155>	<155>
5. Benefit—Administrative Savings	0	0
Net Costs per Small Business Payor	<16,134>	<13,634>

In addition to the impact on payors on Indian lands, MMS estimates there will be additional impacts on the non-payor purchasers of oil produced from Indian leases who are required to submit Form MMS–4416. MMS estimates there will be a total of 110 such purchasers, of whom 83 would be considered small businesses. The estimated total impact on this group follows:

TOTAL IMPACT ON 83 SMALL BUSINESSES PURCHASING INDIAN OIL

	First year	Subsequent years
1. Cost—Additional Royalty Payments	N/A	N/A
2. Cost—Equipment/Compliance	$<249,000>	$<249,000>
3. Cost—Completing Form MMS–4416	<29,050>	<29,050>
4. Cost—Filing new 2014 with Major Portion	N/A	N/A
5. Benefit—Administrative Savings	N/A	N/A
Net Cost to Small Business Purchasers	<278,050>	<278,050>

On a per-purchaser basis, the following chart estimates the impact on each small business purchaser who would submit Form MMS–4416.

SMALL BUSINESS IMPACT CALCULATED ON A PER-PURCHASER BASIS

	First year	Subsequent years
1. Cost—Additional Royalty Payments	N/A	N/A
2. Cost—Equipment/Compliance	$<3,000>	<$3,000>
3. Cost—Completing Form MMS–4416	<350>	<350>
4. Cost—Filing new 2014 with Major Portion	N/A	N/A
5. Benefit—Administrative Savings	N/A	N/A
Net Costs per Small Business Purchaser	<3,350>	<3,350>

1. Cost—Additional Royalty Payments

We estimate that the oil valuation changes proposed in this rule would increase the annual royalties industry must pay to Indian tribes and allottees by $4,624,944. Based on reported revenues by company in 1997, we calculate that small businesses would pay approximately $1.35 million, or roughly 29 percent of the increase. This amounts to an average annual increase of approximately $8,100 per small business.

2. Cost—Equipment/Compliance

Royalty payors would also incur computer, software acquisition, and other costs in order to conform with the new reporting requirements. We estimate that to comply with the rule, payors would need:

—A subscription to an industry newsletter (Platt's Oilgram or similar publication).

—A computer with enough power to effectively run a spreadsheet.

—Spreadsheet software.

—Office space and filing equipment dedicated to maintenance of records relating to the rule.

Although many companies already have these resources available and would incur little additional expense, we estimate the following additional costs may be necessary. (However, we believe the majority of the small businesses would already have the following resources.)

Newsletter subscription	$2,000 per year
Computer acquisition	2,000 one-time

Spreadsheet software	500 one-time
Office space and file equipment ($250 per month for one year).	3,000 per year
Total	7,500 per payor

Because some of the costs are not incurred every year, we estimated the costs for subsequent years' compliance to be $5,000 per payor. This equates to $1,650,000 for all 220 payors to comply with the rule in the first year and $1,100,000 in each subsequent year. The impact on the 166 small businesses amounts to $1,245,000 the first year and $830,000 each subsequent year.

Additionally, non-payor purchasers are required to submit Form MMS–4416. MMS estimates that roughly 110 non-payor purchasers (approximately half of the total payors on Indian lands) will need the same office space and file equipment as indicated above.

Office space and file equipment ($250 per month for one year).	$3,000 per year

This amounts to $3,000 × 110 or $330,000 in additional impact on non-payor entities who are required to submit the form. Using the same ratio of small businesses to all payors on Indian lands (approximately 76%) we assume there will be 83 small businesses that will require the office space and file equipment. This equates to $249,000 each year for all 83 small business non-payor reporters.

In summary, we estimate a total cost of $1,980,000 ($1,650,000 for all payors plus the $330,000 for non-payors) for all of industry to comply with the rule the first year and $1,430,000 ($1,100,000 for all payors plus the $330,000 for non-payors) in each subsequent year.

Specifically, the first-year estimated small business impact (for both payors and non-payors) amounts to $1,494,000 ($1,245,000 for all 166 small business payors plus the $249,000 for the 83 small business non-payors). This amounts to $6,000 for each of the 249 payor and non-payor small businesses. For subsequent years, the estimated small business impact is $1,079,000 ($830,000 for all 166 small business payors plus $249,000 for the 83 small business non payors, or $4,333 per small business).

3. Cost—Completing Form MMS–4416

Industry would also incur costs to complete the proposed new information collection, Form MMS–4416. Part of the Indian oil valuation comparison would rely on price indexes that lessees may adjust for locational differences between the index pricing point and the aggregation point. Indian land lessees and their affiliates, as well as oil purchasers, would be required to give MMS information on the location/quality differentials included in their various oil exchange agreements and sales contracts. From these data, MMS would calculate and publish representative location/quality differentials for payors to use in reporting royalties in different areas.

We estimate the annual costs to industry (both Indian payors and the associated non-payor purchasers) to submit the Form MMS–4416 to be $115,500 (see figures below). MMS estimates that, on average, a payor would have six exchange agreements or sales contracts to dispose of the oil production from the Indian lease(s) for which it makes royalty payments. We estimate that a payor would need about one-half hour on average to gather the necessary contract information and complete Form MMS–4416.

Filing Due to Contract Changes: We estimate a payor would have to submit the form twice a year because of contract changes in addition to the required annual filing discussed below.

220 payors × 6 agreements or contracts/payor × ½ hour/submission × 2 submissions/year = 1,320 burden hours

MMS estimates that in addition to the 1,320 agreements or contracts submitted by all 220 payors, approximately 110 non-payor purchasers of crude oil from Indian leases would also submit about half that amount (660 agreements or contracts). Again, we estimate that the filing of Form MMS–4416 would take 30 minutes per report to gather the necessary 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.

660 agreements or contracts − ½ hour/submission × 2 submissions/year = 660 burden hours

Annual Filing: We would also require all 220 payors and all 110 non-payor purchasers to submit an annual Form MMS–4416 for their agreements or contracts. The annual filing requirement would assure Indian lessors, tribes and allottees that all payors and non-payor purchasers are complying with these proposed Indian valuation regulations. We estimate that this annual filing would require 10 minutes per report to indicate a no-change situation.

(1,320 + 660) agreements or contracts × 1 annual submission × ⅙ hour/submission = 330 burden hours

Total Filing Burden: Based on $50 per hour, we estimate the annual cost to industry would be $115,500, computed as follows:

(1,320 + 660 + 330 burden hours) × $50/hour = $115,500

Dividing this total burden by the 330 entities (220 payors and 110 non-payor purchasers) amounts to a per-business impact of $350. This amount applied to the 220 payors equates to an estimated annual burden of $77,000. This amount applied to the estimated 166 small business payors and the estimated 83 non-payor purchasers equates to estimated annual burdens of $58,100 and $29,050 for payors and non-payor purchasers respectively, or a total small business impact of $87,150.

4. Cost—Filing Supplemental Report of Royalty and Remittance (Form MMS–2014) With Major Portion Uplift

As mentioned earlier in the provisions of the supplementary proposed rule, MMS would calculate a major portion value specific to each tribe. Most Indian leases include this provision, which provides that value for royalty purposes, in the discretion of the Secretary, may be the highest price paid or offered at the time of production for the major portion of oil production from the same field. Lessees should be aware of this provision and account for its impacts when they agree to the lease terms. This is not a new provision created in the proposed rule, and it applies equally to all payors, whether small entities or not.

This major portion value would be calculated by MMS based on values reported on the Form MMS–2014. If the MMS-calculated value were greater than what the lessee initially reported, the lessee would have to file a revised Form MMS–2014, and pay additional royalties.

Industry would incur an administrative burden in filing additional Form MMS–2014 lines to comply with the rule's major portion provision. MMS analyzed reported royalty data for Indian leases for 1997. There were approximately 33,000 individual lines reported for oil and about 6,000 lines for condensate on Form MMS–2014. We estimated that under the provisions of the proposed rule, major portion calculations would have been necessary for as many as 7.5% of these lines. As many as 2,925 lines might have been backed out and reentered, resulting in an additional 5,850 line changes/entries. Based on an average of 7 minutes per line at $50 per hour, the administrative burden for filing Form MMS–2014 lines would total $34,125 annually, or $155 for each of the 220 payors. $25,749 of the

$34,125 is allocated to the 166 small businesses.

5. Benefits—Administrative Savings

Some of the larger industry payors would realize administrative savings because of the reduced complexity in royalty determination and payment under this proposed rule. However, MMS assumes that many of the small payors currently report royalties based on gross proceeds. This method of reporting is relatively simple and is not necessarily the target of significant audit work. These small businesses will not see significant savings under the rule. Specifically, for the larger payors, the proposed rule would result in:

a. Simplification of reporting and pricing, coupled with certainty. We anticipate that the proposed rule would significantly reduce a large payor's time involved in the royalty calculation process. In the proposed framework, the lessee would either report its gross proceeds or the adjusted spot price applicable to their production. The need to work through and apply the current benchmarks for non-arm's-length transactions would be eliminated. Further, once MMS calculates a major portion price, the lessee would compare this price to what they reported and make adjustments as necessary. The lessee's reporting/pricing procedures thus should be fairly straightforward. MMS does not anticipate that any of the small businesses would realize any significant savings because it is likely that the majority of these payors simply report their gross proceeds under the current rule.

It is difficult to quantify the amount of savings by simpler reporting. The current level of time spent calculating royalties varies greatly by company depending on many variables such as the complexity of the disposition or sale of the product, the amount of production to account for, and the computation of any necessary adjustments.

However, we assume that simpler reporting would save each large payor at least 30 minutes per month to report. This conservative figure amounts to a reduction of 6 hours per year per payor. At $50 per hour, the annual savings per payor would be $300. For all 54 large payors this amounts to $16,200.

b. Reductions in audit efforts. When a company is audited, it incurs significant costs. It may be required to gather records, provide documents, and in some cases provide space and facility resources. Although these costs vary significantly by company and by the nature of the audit, we believe that cost savings at least as great as those for simplified reporting would result. MMS estimates this benefit will be realized primarily by the larger payors who are frequently the target of such audit work.

The MMS audit tracking system indicates that approximately 500 Indian oil and gas leases had some type of audit work initiated in 1997. This estimate does not include leases that may have been audited in 1997, but initiated in another year. Also, this figure does not include company audits where auditors examined a sample of leases that may have contained Indian leases. These 500 leases involved approximately 100 companies. Although it is difficult to quantify the future dollar savings for a similar sample of 100 companies, we believe that the expected reduced audit burden would be a significant industry benefit.

c. Reductions in valuation determinations and litigation. The proposed rule would increase certainty for Indian royalty payors. Payors would be assured that if they apply the adjustments required by the proposed rule correctly and remit any additional monies due under the major portion calculation, the amount they report likely would be correct. Additionally, such payors would not be subject to additional bills for additional royalties due with late-payment interest attached. We expect that valuation disputes and requests for valuation determinations would decrease significantly under the proposed rule. Valuation determinations and disputes are very costly for both industry and the Federal Government. Some statistics follow:

—Over the last 10 years, MMS auditors identified more than 50,000 instances concerning royalty underpayments. MMS resolved most of the issues underlying the underpayments before the actual issuance of an order to pay. In fact, MMS issued only 2,100 appealable orders during the same period. Of those, 925 appeals resulted. These audit efforts resulted in the collection of $1.16 billion in additional royalties that otherwise would have gone uncollected.

—Over the past 10 years, Royalty Valuation Division (RVD) Staff responded to over 5,000 separate requests by Federal and Indian lessees for advice on valuation procedures and transportation/processing allowances for royalty calculation purposes. These responses resulted in 247 disputes (about 5 percent of all RVD responses) between MMS and the payor over this same time period. These included disputes over product value (131 separate issues) and allowances for transportation or processing (116 separate issues).

—The Department of the Interior Solicitor's Office reported at least 47 separate cases since 1988 that they believed were significant and involved valuation disputes.

Although it is impossible to quantify the cost to both industry and Government for all valuation disputes since 1988, it is undoubtedly in the tens of millions of dollars. Similar to the audit savings discussed above, we assume this benefit primarily would be realized by the 54 larger companies affected by the rule. We conservatively estimate that the proposed rule's certainty would reduce payors' legal and other administrative costs on Indian leases by at least a million dollars annually, or about $18,500 for each of the 54 large payors.

Altogether, with the limited information we can collect and the gross estimates we made, we assume a total savings to the larger Indian oil lease payors of approximately $1.016 million per year ($16,200 in reporting savings, an unquantifiable amount for audit savings, and $1 million in legal and administrative costs). This total is based on very conservative estimates where actual data are difficult, if not impossible, to obtain. Actual savings would likely be significantly higher.

Alternatives to the Proposed Rule

Title 5 U.S.C. 603(c) provides:

Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as * * *

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from the coverage of the rule, or any part thereof, for such small entities.

Under these provisions, the clear focus of the analysis of significant alternatives is on compliance and reporting requirements, not the substantive policy choices embodied in a proposed rule. We explained above the reasons underlying the agency's policy choices in the January 5, 2000, supplementary proposed rule regarding valuation of oil produced from Indian leases. For reasons that also have been explained above, the agency has simplified to the extent possible the reporting requirements associated with the proposed provisions, specifically, the proposed Form MMS–4416. The basic initial reporting procedures for the Form MMS–2014 (the report of sales and royalty) are unchanged from current procedures that have been in place for many years.

The agency has concluded that the reporting requirements in the supplementary proposed rule are necessary to carry out the substantive royalty valuation policy set forth in that proposal, and that there is no significant alternative for compliance or reporting requirements that would accomplish the policy objective. The Form MMS–4416, as proposed in the supplementary proposal, would collect the minimum information necessary for MMS to apply the substantive provisions of the rule. We do not perceive significant possibilities for further consolidation or simplification of compliance and reporting requirements while still accomplishing the substantive requirements of the supplementary proposed rule.

Theoretically, MMS could reduce the potential cost and compliance burden on all entities (large or small) by selecting a different (and simpler) substantive valuation alternative. Such an alternative also likely would result in lower royalty values, and consequently, smaller royalty payments by all payors. (There is no basis to establish different values of Indian lease oil production based simply on whether the payor is a small entity or not.) However, the Regulatory Flexibility Act does not mandate or contemplate that an agency must select unfavorable substantive policies simply because the policy choice affects small entities.

MMS consulted with the affected tribal and allottee representatives on several occasions and discussed the merits and provisions of several valuation alternatives in depth. MMS, the tribes, and allottee representatives believe that the proposed rule reflects the best method to ensure that Indian lessors receive fair market value for their oil resources.

However, we considered a range of related alternatives such as changes to the current gross proceeds valuation method, using futures prices instead of spot values, and using index-based prices with fixed adjustments for production from specific geographic zones. We chose to apply the highest of:

(1) The average of the high daily applicable spot prices for the month;

(2) MMS-calculated major portion prices in the field or area; or

(3) Gross proceeds received by the lessee or its affiliate.

We chose spot prices as one of the three value measures because:

(1) They represent actual trading activity in the market,

(2) They mirror NYMEX futures prices, and

(3) They permit use of an index price in proximity to the actual production whose value is being measured.

Conclusion

MMS notes that this rule will have a significant impact on a substantial number of small business payors on Indian leases as a percentage of all Indian lease payors. However, we believe the supplementary proposed rule is appropriate because it establishes fair and reliable measures of royalty value for Indian resources. As explained above, we examined several alternatives but concluded that the rule as currently proposed best achieves market value for Indian lessors while minimizing the impact on lessees. MMS has made every attempt to mitigate such impacts, but cannot select policies unfavorable to Indian lessors based on potentially unfavorable impacts on small entities.

[FR Doc. 00–24822 Filed 9–27–00; 8:45 am]
BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC035–2015; DC044–2015; FRL–6878–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing approval of the Post-1996 plan for the Metropolitan Washington, DC ozone nonattainment area submitted by the District of Columbia. The District of Columbia Department of Health submitted this Post-1996 plan as a State Implementation Plan (SIP) revision for the Metropolitan Washington, DC serious ozone nonattainment area to meet the 9% rate-of-progress (ROP) requirement (the Post-1996 plan) of the Clean Air Act (the Act). The Post-1996 plan will result in significant emission reductions through 1999 from the 1990 baseline emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X), which contribute to the formation of ground level ozone.

DATES: Written comments must be received on or before October 30, 2000.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Christopher H. Cripps at (215) 814–2179 (or by e-mail at cripps.christopher@epa.gov) at the EPA Region 3 office above.

SUPPLEMENTARY INFORMATION:

What Action is EPA Proposing Today?

EPA is proposing approval of the Post-1996 plan submitted by the District of Columbia for the District's portion of the Metropolitan Washington, DC ozone nonattainment area.

What Are the Rate-of-Progress Requirements Applicable to the Metropolitan Washington, DC Area?

The Act requires that serious and above ozone nonattainment areas develop plans to reduce area-wide VOC emissions after 1996 by 3% per year until the year of the attainment date required for that classification of nonattainment area. This is commonly referred to as the Post-1996 plan. In this case, the Metropolitan Washington, DC ozone nonattainment area (''the Washington area'') is classified as a serious ozone nonattainment area; the serious attainment date is 1999. The 3% per year requirement is expressed as an average over consecutive 3-year periods; thus, the requirement is a 9% reduction by 1999. These plans were to be submitted by November 15, 1994, and the first 9% reductions were required to be achieved within 9 years after enactment, that is, by November 15, 1999. This 9% reduction requirement is a continuation of the requirement for a 15% reduction in VOC by 1996. For the Post-1996 plan, the Act allows the substitution of NO_X emissions reductions for VOC emission reductions where equivalent air quality benefits are achieved as determined using the applicable EPA guidance. The 9% VOC/