



Oryx Energy Company  
19155 Noel Road  
Dallas TX 75240-5067  
P.O. Box 9880  
Dallas TX 75221-2880  
972 715 4000

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Mr. David S. Guzy  
Chief, Rules and Publications Staff  
Royalty Management Program  
Minerals Management Service  
P. O. Box 25165, MS 3021  
Denver, Colo. 80225-0165

Re: Establishing Oil Value for Royalty Due on Federal Leases

Dear Mr. Guzy:

Oryx Energy Company (Oryx) appreciates the opportunity to comment on the Minerals Management Services' February 6, 1998 Federal Register notice titled "Establishing Oil Value for Royalty Due on Federal Leases". As a lessee, Oryx holds over 150 federal leases and remits over \$3.5 million per month in federal royalties. We are very conscientious about our royalty obligations and thus wish to offer the following comments on the subject proposed rules.

#### General

Oryx believes that any royalty program should adhere to the concepts of certainty and simplicity for both the lessee and lessor. We feel strongly that these concepts can best be achieved by the implementation of a royalty in kind program for federal production. We support efforts to implement such a program as a long term alternative to the antiquated and burdensome benchmarks. The current proposed rules do not go far enough to assure certainty and simplicity. If implemented as proposed, they will result in continued burdensome audits, second guessing of lessee valuation by MMS, and litigation between industry and the federal government.

The proposed rules seem to have added emphasis on the so-called lessee's duty to market. This implied duty to market has been greatly expanded in our views. We do not believe we have an obligation to market any production past the bounds of the physical lease. The proposed rules provide much uncertainty as to the lessee's marketing obligations. The proposed rules also give the MMS much latitude in determining after the fact what is allowable for royalty valuation. Conceivably, as written, the current proposed rules give the MMS latitude to disallow any arms-length arrangement they feel is not representative of market.

### Definitions

-Arms-Length Contract - with so many ownership changes going on in the industry, is an ALC between two unaffiliated parties still an ALC after one of the parties has sold or purchased their interest to another?

-Index Pricing Point - MMS is given too much latitude in determining what is an approved publication. Gaming is a concern.

-Market Center - MMS is given too much latitude in recognizing the major points and approving publications that publish oil spot prices. Gaming is a concern.

-MMS Approved Publication - see Index Pricing Point and Market Center

-Person - this definition needs to clarify that a 'joint venture' does not mean a Joint Operating Agreement (JOA). It is common practice for a small non-operating working interest owner to allow the operator to sell his share of production under the provisions of the JOA. This should not be interpreted by the MMS as a non-arms length situation per the 'ALC' and 'person' definitions. Many times it is not feasible or practical for a small non-operating working interest owner to hire a marketing staff to market small volumes of production.

-Tendering Program - what is "other geographical/physical unit for competitive bidding"?

### Section 206.102

The MMS is allowing oil to be valued under this section utilizing the proceeds received by the lessee's affiliate under their ALC. The issue here is that the lessee's affiliate may not be able to trace back to any particular lease oil that is commingled, gathered or trucked or pipelined, and then sold at a trade point or market center. Oil trading affiliates rely on large, bulk sales of oil for their existence. Generally, they do not buy oil in these large quantities. They must buy smaller volumes and depend on aggregation to get the large bulk quantities needed for resale. Their computer systems are not designed to trace resold volumes back to any particular lease or producer. MMS would also have problems tracing back volumes to where they were produced. The major concern is that MMS would second guess oil resale allocations and force a lessee to rework all their valuation scenarios to obtain more favorable valuation for their oil.

The last sentence in subsection ( c )3 relates to arms length exchange agreements. This sentence states that if MMS determines that an arms length exchange agreement does not reflect a reasonable quality or location differential, then the MMS may require the lessee to utilize Section 206.103, which is mostly index based valuation. Oryx feels the MMS is given too much latitude to disallow transactions under arms length exchange agreements. No specific criteria is given for when the MMS will disallow an arms length exchange agreement. There is no certainty on the lessee's part for knowing that he paid his royalty correctly. There is always the possibility he will be second guessed when an audit is performed.

### Section 206.103

Oryx still believes there is a viable lease market for most federal production. Valuing lease production utilizing higher priced alternatives such as ANS spot prices or NYMEX futures prices does not reflect what we believe to be our royalty payment obligation to the government. Paying royalties on higher basis than the lease market results in an added tax imposed on lessees by the government. The government desires to share in the fruits and rewards of an off-lease marketing line of business without standing any of the costs and risks inherent in that activity.

Section 206.107

This section does not appear to make sense. What exactly is non-binding and on whom? As it reads, if a lessee asks MMS for guidance on a valuation issue, the MMS can provide valuation guidance but may not honor it at a later date. If this is so, then why even provide any guidance? If the MMS cannot provide a lessee with guidance on its own regulations, then how can the MMS expect a lessee to be able to interpret and apply those same regulations?

Section 206.112 / 113

These regs are confusing and hard to follow. Assuming a lessee follows these to the letter, there still remains much uncertainty on the lessee's part that he has fully complied. There is no certainty nor simplicity to these two sections.

The Form 4415 is still an added administrative burden on both industry and the MMS. The information requested on the form may have to come from different companies with differing systems. Data such as contract numbers may also be different between companies. How does one file a corrected form? How are hand written comments going to be incorporated into the MMS' system? As to the rates calculated by MMS from these forms, are they subject to review or audit? Is industry supposed to accept these rates as 'gospel'? What happens if the rates calculated by the MMS are not in their eyes representative? From all these concerns, there is still too much uncertainty and uneasiness surrounding this form. We do not believe the justification for this form has been thoroughly examined by MMS. MMS is also ignoring the added burdens this form will add to both our staffs.

Section 206.123

Operating allowance needs to be included in the definitions section. It is still unclear what is meant by an operating allowance, both in this section and its predecessor section .

Again, Oryx appreciates the opportunity to comment on the proposed rules. We support the efforts and the comments of the IPAA/DPC coalition and COPAS. We also wish to reiterate our desire to help establish rules that assure certainty and simplicity for both industry and the MMS. Please feel free to call if you have any questions.

Sincerely,



Salomon Tristan  
Manager, Revenue Accounting