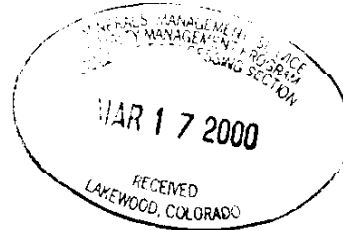


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San Juan Basin  
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March 16, 2000



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

Dear Mr. Guzy:

RE: Establishing Oil Value for Royalty Due on  
Indian Leases, Supplementary Proposed Rule,  
65 Fed Reg 403 (January 5, 2000)

The Council of Petroleum Accountants Societies (COPAS) appreciates the opportunity to comment on MMS' supplementary proposed rule regarding oil valuation from Indian leases. COPAS members have extensive experience with Royalty Management Program rules, handle royalty valuation, transportation, and processing allowances, adjustments, bills, audits, and other royalty matters on a regular basis. Therefore, we believe our comments will be beneficial in improving RMP processes for both the MMS and industry.

COPAS incorporates by reference our previous comments regarding oil valuation from Indian leases.

#### General Comment

COPAS commends MMS for the changes made in the Supplementary Proposed Rule. We believe that changing from the average of the five highest NYMEX values during the month to the monthly average of the high spot values, allowing transportation from the lease to the aggregation point instead of the reservation boundary to the aggregation point, and the reduction to the information collection on MMS Form 4416 are all positive changes that have improved the proposed rule.

#### Specific Comments

##### Paragraph 206.51 Definitions

**Rocky Mountain Region** - COPAS strongly urges MMS to define the San Juan Basin as a separate and distinct region. Under the definition as proposed a lessee who operates a unit with wells in both Colorado and New Mexico would have to value the crude oil or condensate under two different valuation methods. This is an unreasonable administrative burden especially since the oil or condensate does not leave the basin.

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Paragraph 206.52 How does a lessee determine royalty value of the oil? - In this paragraph MMS proposes that oil be valued on the highest of three methods, i.e., gross proceeds, a market center netback price, or a major portion value. COPAS does not believe the valuation method proposed by MMS is in compliance with the lease terms for the majority of Indian leases.

Generally, the major portion provision states:

"During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered... at the time of production for the major portion of the oil of the same gravity, ...produced and sold from the field where the leased lands are situated...." "The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value."

MMS has not demonstrated that the index method is a value "paid or offered in the field." Quite frankly, based upon the increased royalties referenced in the preamble and information provided at the February 8, 2000, Public Hearing, COPAS believes that MMS has shown that this value is not paid or offered in the field; therefore, we believe that doing a major portion analysis on an artificial value is not in compliance with the lease terms.

COPAS also does not believe that the spot price method is a proper valuation method for the majority of Indian leases because the oil or condensate can not physically flow to the market centers. Using the San Juan Basin as an example, the oil produced in the Basin is refined there and has no economic way to flow to Midland or Cushing.

COPAS recommends that gross proceeds be used to determine royalty value and that a major portion analysis be done on the amounts realized by the lessees. If MMS decides to retain the spot market method to determine value, COPAS recommends that the major portion analysis and comparison to gross proceeds be deleted. COPAS is willing to consider an "opt out" provision in this rule similar to the one in the Indian Gas Valuation rule for those Indian Tribes and Allottees who believe that gross proceeds are higher than the spot market method.

Paragraph 206.52(c)(3) - As stated in the preamble, MMS has deleted the 120-day requirement to complete the major portion calculation. MMS justified the removal by stating that they can foresee occasional problems in acquiring the needed data. MMS stated further that this should have no adverse effect on lessees because late payment interest would not accrue until the due date of the Form MMS-2014.

COPAS strongly opposes the elimination of the 120-day requirement. If MMS requires more time to perform the major portion analysis, COPAS is not opposed to making the time frame 180 days, but we firmly believe that the MMS and Indian lessors have an obligation to timely inform the lessee of their royalty liability. Late payment interest is not the only issue. The bigger issue is what are the costs to own and operate the lease. Any increased royalty over what the lessee received for the oil comes out of the lessees' pocket and affects the lease profitability. If the lessee does not know what his royalty and tax obligation is going to be, it is impossible for them to make informed decisions concerning the lease. COPAS recommends that a 180-day time frame for MMS to complete the major portion analysis be included in the final rule.

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Paragraph 206.52(d) - In this paragraph MMS states they will publish the major portion value in the Federal Register. COPAS recommends that MMS include this value on their website and issue a Dear Payor letter.

Also in this paragraph, MMS states that you must submit an amended Form MMS-2014 within 30 days after MMS publishes the major portion value in the Federal Register. This is insufficient time for the lessees to recalculate their royalties. As an example, let us assume that for January production MMS published the major portion value in the May 23 Federal Register. To meet the 30-day time frame, lessees would have to report any increased royalties by June 22. Many payors submit MMS-2014 reports only once a month and would be unable to accelerate their report to meet such an off-cycle deadline. COPAS recommends that the 30 days be changed to 60 days or at the very least the language be changed to read "additional major portion royalties and royalty reports will be due at the end of the month following the month MMS publishes the value in the Federal Register.

Paragraph 206.61 - MMS stated at the February 8, 2000, Public Hearing that a lessee who sold their oil at the lease and did not incur transportation cost could use the purchasers transportation cost to the aggregation point in the index calculation. COPAS recommends that this provision be included in the final rule. COPAS would also recommend that MMS include in the final rule guidance on what documentation the lessee must obtain from the purchaser and guidance on what the lessee should do if the purchaser is unwilling to provide the information.

#### FORM MMS-4416

COPAS objects to this informative collection in its entirety. We do not believe there are sufficient transactions involving Indian oil between aggregation points and their associated market centers to provide MMS with beneficial information. COPAS also believes that because of the lack of guidance in the instructions concerning the data MMS is trying to collect, MMS is going to be collecting information that will not be used by the MMS or the Indian lessor which is not in accordance with the Paperwork Reduction Act. COPAS recommends that the information collection be eliminated.

If MMS decides to continue the information collection, below are some specific comments regarding Form MMS-4416 and its instructions.

1. The instructions provide little or no guidance on what is supposed to be reported. If MMS is anticipating that all purchasers, exchange parties, and refiners are fully versed in these royalty regulations, COPAS believes MMS is going to be greatly disappointed. As an example, the instructions state "you should fill out this form if you produce, sell, purchase, exchange, or refine oil produced from Indian lands." First of all, this statement implies that all these entities know where the oil was produced, or makes it their responsibility to determine where the oil was produced. COPAS does not believe this is possible.

Second, the form implies that all the entities above must file forms. Assume that Refiner X purchases oil at Midland and moves the oil to its refinery. Is Refiner X required to file a form? If so, MMS is collecting data that they have no use for.

2. Under No. 8 - Crude Oil Quality and Adjustments, MMS asks for the API Gravity. The way the instructions read, an entity, if they were using the actual gravity, would have to file multiple forms. COPAS was under the impression this was a yearly form. Should the entity report the weighted average gravity for the reporting period?

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COPAS recommends that the instructions to Form MMS-4416 be rewritten to clearly define the transactions MMS wants reported.

Under Part 8 of Form MMS-4416, MMS asks for the Sulfur Content % and the Parafin Content %. This information is not available! We have checked with knowledgeable persons on the operating side of the business and they have stated that this data is rarely available, especially when dealing with lease transactions. They further stated that oil might be tested by the purchaser when it initially begins purchasing, but would probably never be tested again unless there was some concern. COPAS recommends that these items be eliminated from the form.

Overall, COPAS is concerned that Form MMS-4416 will lead to litigation because MMS is requesting data that is not available. We are also concerned that the form requirement on parties other than the lessee (working interest owners and not a downstream affiliate) could result in purchasers who are unwilling to purchase Indian oil.

#### Other Items

COPAS notes that there are two items that were included in the Federal Oil Valuation proposal that have not been included in this proposed rule.

1. MMS has proposed changes to the actual transportation cost calculation. COPAS recommends that those changes be included in this rule.
2. MMS has proposed language related to Binding Valuation Determinations. COPAS believes that the Indian lessees are entitled to the same certainty as Federal lessees; therefore, we recommend that those provisions be included in this rule.

#### Conclusion

COPAS believes that this rule is not in the best interest of the lessor or the lessee. Near term, this proposal may result in increased royalty payment to the Indian lessor but we are concerned that long term the proposal could result in reduced leasing activities and reduced recovery of the natural resources. COPAS recommends that this proposal be withdrawn.

COPAS appreciates the opportunity to comment to this rule. If you have any questions, please contact me at (580) 767-5044.

Sincerely,



John Clark  
Chair, COPAS Standing Revenue Committee

mdb

cc:

Doyle Wofford, COPAS President  
Darrell Gingerich, COPAS Board Liaison