

**Supporting Statement for
30 CFR Part 208—Sale of Federal Royalty Oil; Royalty-in-Kind (RIK) Program
(Form MMS-4070, Application for the Purchase of Royalty Oil)
(OMB Control Number 1010-0042)
(Expiration Date: April 30, 2004)**

A. Justification

1. What circumstances make this collection of information necessary?

The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The Minerals Management Service (MMS) performs the royalty management functions and assists the Secretary in carrying out the DOI Indian trust responsibility.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately.

MMS consolidated and revised existing regulations governing the sale of onshore and offshore royalty crude oil to establish uniformity within the regulatory text, providing industry with a more efficient and responsive Royalty-In-Kind (RIK) program, and improving the Federal Government's administration of the program. Regulations at 30 CFR 208 (Attachment 1) describe the information collections required by the RIK program.

Section 36 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 192), and Section 27 of the Outer Continental Shelf (OCS) Lands Act of 1953, as amended (43 U.S.C. 1353) (Attachment 1), authorize the Secretary of the Interior to sell royalty oil accruing to the United States. The oil and gas leases issued are pursuant to said acts. "Royalty oil" is crude oil produced from leased Federal lands, both onshore and offshore, in instances in which the Government exercises the option to accept a lessee's royalty payment in oil rather than in money. Title to the oil is transferred to the Government and then sold to an eligible refiner. When the Secretary determines that small refiners do not have access to adequate supplies of oil, the

Secretary may dispose of any oil taken as royalty by conducting a sale of such oil, or by allocating it to eligible refiners.

Other citations, including 30 U.S.C. 189 pertaining to Public Lands, 30 U.S.C. 359 pertaining to Acquired Lands, and 43 U.S.C. 1334 pertaining to OCS Lands (Attachment 1), provide that the Secretary is authorized to prescribe proper rules and regulations and to do any and all things necessary to accomplish the purpose of applicable laws.

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

“Royalty oil” is crude oil produced from leased Federal lands, both onshore and offshore, in instances in which the Government exercises the option to accept a lessee’s royalty payment in oil rather than in money. Title to the oil is transferred to the Government and then sold to an eligible refiner. When the Secretary determines that small refiners do not have access to adequate supplies of oil, the Secretary may dispose of any oil taken as royalty by conducting a sale of such oil, or by allocating it to eligible refiners.

Activity in the RIK program depends on a number of refiners expressing a need for supplies of oil so that the Secretary authorizes a sale of royalty oil. RIK sales are offered under an Invitation for Offer (Invitation) for both Pacific OCS production and Gulf of Mexico production generally for 1-year contracts. The last RIK sale was held in 2002 for Pacific production with deliveries commencing January 2003. Eight applicants responded by submitting the Application for the Purchase of Royalty Oil, Form MMS-4070 (Attachment 2), and filing competitive bids under the Invitation.

When the Secretary decides to offer royalty oil taken in kind for sale to eligible refiners, MMS will publish a Notice of Availability of Royalty Oil in the *Federal Register*, and other printed media, when appropriate. The Notice includes administrative details concerning the application, allocation, and the contract award process for the royalty oil. After the Notice is published, MMS will publish in the *Federal Register* an Invitation detailing specific information about the crude oil types offered for sale and the location of delivery points. The refiners interested in purchasing royalty oil will submit the Form MMS-4070 in accordance with instructions in the Notice, and instructions issued by MMS for completion of the form.

MMS uses the information collected on the Form MMS-4070 to determine if the applicant meets eligibility requirements to contract to purchase royalty oil (that is, they are “prequalified” to submit bid offers under the Invitation). The information collected also provides a basis for the allocation of available royalty oil among qualified refiners, if applicable.

The Government's administration of the royalty oil program is aided significantly by the collection of information requested on Form MMS-4070. Form MMS-4070 is used to determine the eligibility of refiners wishing to enter into contracts to purchase royalty oil. The form requires:

- (1) the name and address of the applicant;
- (2) the number of persons employed by the applicant's firm (offshore sale only);
- (3) a disclosure of any affiliation with other companies;
- (4) the capacity and the location of the applicant's refinery(ies);
- (5) the identification of any Government royalty oil contract numbers (if any) under which the applicant currently receives royalty oil;
- (6) a preference eligibility request;
- (7) the identification of the locations (area/region and State) where the applicant proposes to purchase royalty oil, the volume of oil requested, and the specific refineries in which the oil will be refined;
- (8) an authorized signature certifying the accuracy of information supplied as an eligible refiner; and
- (9) the name of the preparer.

Section 208.9 requires that eligible refiners who purchase royalty oil must submit to MMS two copies of any written third-party agreements, or two copies of a full-written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. Also, the purchaser must submit copies of agreements pertaining to quality differentials that may occur between the lease(s) and the delivery point(s). In addition, eligible refiners who purchase royalty oil cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS.

Eligible small refiners are no longer required to submit a letter of credit upon submittal of Form MMS-4070. Instead, MMS has implemented a "pre-qualification process" whereby small refiners are approved and issued an unsecured line of credit based on their company financial statements and creditworthiness. The pre-qualification process is discussed under information collection request OMB Control Number 1010-0129. Only if the 60-day value of crude oil awarded to the small refiner exceeds the MMS-approved line of credit is the small refiner required to provide financial assurance in the form of a letter of credit, bond, prepayment, or other MMS-acceptable financial assurance to compensate for the deficiency. For example, if the small refiner is approved for \$5,000,000 of unsecured credit, and the 60-day value of crude sales is \$7,000,000, the small refiner must provide an additional \$2,000,000 of "secured credit" or financial assurance.

We are revising this ICR, OMB Control Number 1010-0042, to include additional reporting requirements contained in 30 CFR Part 208 (Attachment 1) that were not included under the original OMB approval for this ICR. We also changed the title to more closely reflect the information we are collecting. We changed the title from "Application for the Purchase of Royalty Oil" to "30 CFR Part 208—Sale of Federal Royalty Oil; Royalty-in-Kind (RIK) Program (Form MMS-4070, Application for the Purchase of Royalty Oil)."

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

The information required on Form MMS-4070 must be taken from the records of refiners for each specific application for the purchase of royalty oil. Respondents use electronic reporting methods, and we encourage them to do so. All responses can be collected electronically.

4. Is the information described by any other Federal agency, and can similar information be used or modified for this collection?

The information requested is not readily available from any source other than the refiner purchasing the oil. The information required by the RIK program is not duplicated by MMS or any other Government agency.

5. What is the agency doing to minimize the burden on small businesses or other small entities?

Small organizations are among the potential respondents to these requests for information. MMS has carefully analyzed all requirements to ensure that the information requested is the minimum necessary. There are no special provisions for small organizations. MMS is in regular contact with respondents and provides assistance upon request. MMS has also eliminated the requirement that small refiners submit a letter of credit upon submittal of Form MMS-4070. Therefore, small refiners are required only to provide financial assurance when and only if they are awarded a sales contract under the Invitation to compensate for any deficiencies in their MMS-approved line of credit compared to the 60-day value of the awarded amount.

6. What are the consequences to the Federal program or policy if the information is not collected or is collected less frequently, and are there technical or legal obstacles to reducing the burden?

MMS requires specific information from each respondent in order to assure refiners are eligible to receive royalty oil. There are no technical or legal obstacles to reducing the burden.

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?

Interested purchasers must submit Form MMS-4070, whenever a sale is held. The information collected is used to determine the applicant's eligibility to purchase royalty oil, and also provides a basis for the allocation of available oil among qualified refiners.

This collection of information is consistent with the provisions at 5 CFR 1320.5(d)(2) except for (iv). In accordance with 30 U.S.C. 1713(b), Indian oil and gas records must be maintained for 6

years after the records are generated unless the Secretary notifies the record holder that such records must be maintained for a longer period due to an ongoing audit or investigation. 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 classification; 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 a 60-day review and comment notice in the *Federal Register* on October 30, 2003 (68 FR 61823) (Attachment 3). We received no comments in response to this notice.

The MMS routinely corresponds with the small refiner community and holds periodic meetings with them to obtain feedback on the small refiner program. The last outreach meeting was in Fall 2003. Feedback from that meeting is incorporated in the estimates shown in A.12.

Determination of Need Notice:

We plan to periodically issue a Determination of Need notice. Therefore, we requested and received approval of this ICR through OMB (OMB Control Number 1010-0119, expiration date January 31, 2006).

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 provided to MMS relative to minerals removed from Federal leases may be proprietary. Trade secrets and proprietary and other information are protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982, 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). Storage of proprietary information and access to it are controlled by strict security measures. (See information collection request OMB Control Number 1010-0129 for further discussion on company financial statements.)

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 respondent reporting and recordkeeping “hour” burden?

The annual reporting burden is rounded up to 21 hours. We expect approximately eight

respondents to submit Form MMS-4070, a letter of intent, and copies of the agreement. We estimate one purchaser will request approval from MMS for an alternate delivery point for oil. We also estimate that one purchaser will request a transfer, an assignment, or a sale, and one purchaser may gather information for an incomplete Form MMS-4070. 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 \$1,050. There are no additional recordkeeping costs.

Respondent Annual Burden Hour Chart

30 CFR Section	Reporting Requirement	Burden Hours per Response	Annual Number of Responses	Annual Burden Hours
208.4 (a)	Royalty oil sales to eligible refiners. (a) <i>Determination to take royalty oil in kind.</i> * * * The Secretary will review these items [submitted by small refiners] and will determine whether eligible refiners have access to adequate supplies of crude oil * * *. <i>(Determination process)</i>	Burden covered by OMB Control Number 1010-0119.		
208.4 (d)	Royalty oil sales to eligible refiners. (d) <i>Interim sales.</i> The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase * * *. <i>(Determination process)</i>	Burden covered by OMB Control Number 1010-0119. See § 208.4(a).		
208.6 (a) and (b)	General application procedures. (a) To apply for the purchase of royalty oil, an applicant must file a Form MMS-4070 with MMS in accordance with instructions provided in the “Notice of Availability of Royalty Oil” and in accordance with any instructions issued by MMS for completion of Form MMS-4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS-4070.	1.25	8	10

30 CFR Section	Reporting Requirement	Burden Hours per Response	Annual Number of Responses	Annual Burden Hours
	(b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS-4070 at the time of application: * * *. <i>(Application process)</i>			
208.7 (a)	Determination of eligibility. (a) The MMS will examine each application and may request additional information if the information in the application is inadequate * * *. <i>(Application process)</i>	0.25	1	1 (rounded up from 0.25)
208.8 (a)	Transportation and delivery. (a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS. <i>(Application process)</i>	1	1	1
208.8 (b)	Transportation and delivery. (b) * * * If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 206 * * *. <i>(Application process)</i>	Burden covered by OMB Control Number 1010-0140. This provision is no different than the transportation allowances allowed in Part 206 for royalties paid in-value. The lessee enters allowance amount on Form MMS-2014.		
208.9 (a)	Agreements. (a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point	1	8	8

30 CFR Section	Reporting Requirement	Burden Hours per Response	Annual Number of Responses	Annual Burden Hours
	<p>of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points. <i>(Application process)</i></p>			
208.10 (d)	<p>Notices. (d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease * * *. <i>(Application process)</i></p>	Burden covered by OMB Control Number 1010-0126.		
208.10 (e)	<p>Notices. (e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. * * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated * * *. <i>(Application process)</i></p>	1	1	1
208.11 (a) , (b) (d), and (e)	<p>Surety requirements. (a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges * * *. (b) * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date * * *. (d) The "MMS-specified surety instrument" shall be in a form specified by MMS instructions or approved by MMS. * * * (e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the</p>	Burden covered by OMB Control Number 1010-0135.		

30 CFR Section	Reporting Requirement	Burden Hours per Response	Annual Number of Responses	Annual Burden Hours
	Government's interests. <i>(Sureties Forms 4071 and 4072)</i>			
208.15	Audits. Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by MMS * * *.	PRODUCE RECORDS ORA determined that the compliance process is exempt from the PRA because MMS staff asks non-standard questions to resolve exception.		
	Total		4.5	19

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?

We estimate that the Federal Government will spend approximately 18.5 hours to analyze and review the required information. Based on \$50 per hour, the annualized cost to the Federal Government is \$925. Refer to the chart below for the cost breakdown.

Cost Breakdown for Federal Government

30 CFR Section	Reporting or Recordkeeping Requirement	MMS Processing Time/ Request	Annual Number of Requests	Total MMS Processing Time	Cost to Federal Government
208.6 (a) and (b)	<p>General application procedures. (a) To apply for the purchase of royalty oil, an applicant must file a Form MMS-4070 with MMS in accordance with instructions provided in the “Notice of Availability of Royalty Oil” and in accordance with any instructions issued by MMS for completion of Form MMS-4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS-4070. (b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS-4070 at time of application: * * *. <i>(Application process)</i></p>	0.5	8	4	\$200
208.7 (a)	<p>Determination of eligibility. (a) The MMS will examine each application and may request additional information if the information in the application is inadequate * * *. <i>(Application process)</i></p>	0.5	1	0.5	\$25
208.8 (a)	<p>Transportation and delivery. (a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS. <i>(Application process)</i></p>	5	1	5	\$250

30 CFR Section	Reporting or Recordkeeping Requirement	MMS Processing Time/ Request	Annual Number of Requests	Total MMS Processing Time	Cost to Federal Government
208.9 (a)	<p>Agreements. (a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points. <i>(Application process)</i></p>	1	8	8	\$400
208.10 (e)	<p>Notices. (e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS.* * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated* * *. <i>(Application process)</i></p>	1	1	1	\$50
Total		8	19	18.5	\$925

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 is 19 hours. We are increasing (program change) the number of burden hours upward by 2 (rounded up from 1.25) hours to reflect an increase in the number of responses received.

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

The data collected will not be tabulated or published for statistical use.

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-4070.

18. Is the agency requesting exceptions to the certification statement in Item 19 of Form OMB 83-I?

To the extent that 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.