

(ii) You must value your oil under this section at an index price; and

(iii) You believe that use of the index price is unreasonable.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director establishes a value representing market value at the refinery, you may not take an allowance against that value under §206.112(b) unless it is included in the Director's approval.

§206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the FEDERAL REGISTER a list of acceptable index price publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and (4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

(d) MMS may revoke its approval of a particular publication if it determines that the prices published in the publication do not accurately represent spot market values.

§206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must be able to show:

(1) How you calculated the value you reported, including all adjustments for location, quality, and transportation, and

(2) How you complied with these rules.

(b) Recordkeeping requirements are found at part 207 of this chapter.

(c) MMS may review and audit your data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§206.107 How do I request a value determination?

(a) You may request a value determination from MMS regarding any Federal lease oil production. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases;

(3) Completely explain all relevant facts. You must inform MMS of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

§ 206.108

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) MMS will reply to requests expeditiously. MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS; or

(3) Inform you in writing that MMS will not provide a value determination. Situations in which MMS typically will not provide any value determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay late payment interest under 30 CFR 218.54.

(3) A value determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) A value determination issued by MMS is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS (for MMS-issued value determinations) or the Assistant Secretary modifies or rescinds it.

(1) A value determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B.

(2) If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

(e) In making a value determination, MMS or the Assistant Secretary may use any of the applicable valuation criteria in this subpart.

30 CFR Ch. II (7-1-00 Edition)

(f) A change in an applicable statute or regulation on which any value determination is based takes precedence over the value determination, regardless of whether the MMS or the Assistant Secretary modifies or rescinds the value determination.

(g) The MMS or the Assistant Secretary generally will not retroactively modify or rescind a value determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 206.108.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *Transportation allowances permitted when value is based on gross proceeds.* MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under §§ 206.110 or 206.111, as applicable. This paragraph applies when:

(1) You value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and

(2) The movement to the sales point is not gathering.

(b) *Transportation allowances and other adjustments that apply when value is based on index pricing.* If you value oil using an index price under § 206.103, MMS will allow a deduction for certain