

an unreasonable value for your production as a result of circumstances regarding that production, the ONRR Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.112.

(2) If the ONRR Director determines that use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula used by industry to calculate the roll changes, ONRR may terminate or modify use of the roll under paragraph (c)(1) of this section at the end of each 2-year period following July 6, 2004, through notice published in the FEDERAL REGISTER not later than 60 days before the end of the 2-year period. ONRR will explain the rationale for terminating or modifying the use of the roll in this notice.

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may establish reasonable royalty value based on other relevant matters.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* (1) Instead of valuing your production under paragraph (a), (b), or (c) of this section, you may apply to the ONRR Director to establish a value representing the market at the refinery if:

(i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and

(ii) You must value your oil under this section at the NYMEX price or ANS spot price; and

(iii) You believe that use of the NYMEX price or ANS spot price results in an unreasonable royalty value.

(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 ONRR requires.

(3) If the ONRR Director establishes a value representing market value at the refinery, you may not take an allowance against that value under § 1206.112(b) unless it is included in the Director's approval.

[65 FR 14088, Mar. 15, 2002, as amended at 67 FR 19111, Apr. 18, 2002; 69 FR 24976, May 5, 2004]

#### **§ 1206.104 What publications are acceptable to ONRR?**

(a) ONRR periodically will publish in the FEDERAL REGISTER a list of acceptable publications for the NYMEX price and ANS spot price 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 estimates based on daily surveys of buyers and sellers of crude oil, and, for ANS spot prices, buyers and sellers of ANS crude oil; and

(4) Publications independent from ONRR, other lessors, and lessees.

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

(c) ONRR will specify the tables you must use in the acceptable publications.

(d) ONRR may revoke its approval of a particular publication if it determines that the prices or differentials published in the publication do not accurately represent NYMEX prices or differentials or ANS spot market prices or differentials.

[65 FR 14088, Mar. 15, 2000, as amended at 69 FR 24976, May 5, 2004]

#### **§ 1206.105 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

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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 1207 of this chapter.

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

### **§ 1206.106 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.

### **§ 1206.107 How do I request a value determination?**

(a) You may request a value determination from ONRR 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 ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(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) ONRR will reply to requests expeditiously. ONRR may either:

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

(2) Issue a value determination by ONRR; or

(3) Inform you in writing that ONRR will not provide a value determination. Situations in which ONRR 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, Policy, Management and Budget, is binding on both you and ONRR 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 § 1218.54 of this chapter.

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

(1) A value determination by ONRR is not an appealable decision or order under 30 CFR part 1290.

(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 1290.

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

(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 ONRR or the Assistant Secretary modifies or rescinds the value determination.