exchange agreement(s). If MMS determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 206.102(d)(1) to use § 206.102(a) or § 206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every 2 years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(ii) When you elect under § 206.102(d)(2)(i) to use § 206.102(a) or § 206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's length. You may not change your election more often than once every 2 years.

(e) If you value oil under paragraph (a) of this section:

(1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(2) You must base value on the highest price the seller can receive through legally enforceable claims under the contract.

(i) If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. But you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits, if:

(A) The seller makes timely application for a price increase or benefit allowed under the contract;

(B) The purchaser refuses to comply; and

(C) The seller takes reasonable documented measures to force purchaser compliance.

(ii) Paragraph (e)(2)(i) of this section will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that is not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 206.102 or that you elect under § 206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with MMS approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the trading month most concurrent with the production month. (For example, if the production month is June, compute the average of the daily mean prices using the daily ANS spot prices published in the MMS-approved publication for all the business days in June.)

(1) To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication.

(2) Use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(4) After you select an MMS-approved publication, you may not select a different publication more often than

once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations.

(1) If you have an MMS-approved tendering program, value your oil under paragraph (b)(2) of this section. If you do not have an MMS-approved tendering program, you may value your oil under either paragraph (b)(3) or paragraph (b)(4) of this section.

(i) You must apply the same subparagraph of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that you cannot value under § 206.102 or that you elect under § 206.102(d) to value under this section.

(ii) After you select either paragraph (b)(3) or (b)(4) of this section, you may not change to the other method more often than once every 2 years, unless the method you have been using is no longer applicable and you must apply one of the other paragraphs. If you change methods, you must begin a new 2-year period.

(2) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest winning bid price for tendered volumes.

(i) You must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area under your tendering program.

(ii) You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(iii) MMS will provide additional criteria for approval of a tendering program in its revenue reporter handbook.

(3) Value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month. Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arms-length purchases or sales to the same gravity as that of the oil produced from the lease.

(4) Value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, during the trading month most concurrent with the production month. (For example, if the production month is June and the trading month is May 26—June 25, compute the average of the daily mean prices using the daily Cushing spot prices published in the MMS-approved publication for all the business days between and including May 26 and June 25.)

(i) Calculate the daily mean spot price by averaging the daily high and low prices for the period in the selected publication.

(ii) Use only the days and corresponding spot prices for which such prices are published.

(iii) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(iv) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(5) If you demonstrate to MMS's satisfaction that paragraphs (b)(2) through (b)(4) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS 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 average of the daily mean spot prices published in any MMS-approved publication:

(i) For the market center nearest your lease for crude oil similar in quality to that of your production (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils—their quality specifications differ significantly); and

(ii) During the trading month most concurrent with the production month. (For example, if the production month is June and the trading month is May 26–June 25, compute the average of the daily mean prices using the daily spot prices published in the MMS-approved publication for all the business days between and including May 26 and June 25 for the applicable market center.)

(2) Calculate the daily mean spot price by averaging the daily high and low prices for the period in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(3) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(d) *Unavailable or unreasonable index prices.* If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *Production delivered to your refinery and index price is unreasonable.*(1) Instead of valuing your production under paragraph (a), (b), or (c) of this section, you may apply to the MMS 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 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.

[65 FR 14088, Mar. 15, 2002, as amended at 67 FR 19111, Apr. 18, 2002]

§ 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