

price (effectively a subtraction from the NYMEX price).

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Trading month means the period extending from the second business day before the 25th day of that month through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, www.nymex.com, in which case the NYMEX definition will apply.

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WTI differential means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing, Oklahoma, published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

Example. Assume the production month is March 2003. Industry trade publications perform their price surveys and determine differentials during January 26 through February 25 for oil delivered in March. (California is an exception. In California, the survey covers the calendar month of February for March deliveries.) The WTI differential (for example, the West Texas Sour crude at Midland, Texas, spread versus WTI) applicable to valuing oil produced in the March 2003 production month would be determined using all the business days for which differentials are published during the period January 26 through February 25.

3. In § 206.103, paragraph (e) is amended as follows:

A. The paragraph heading is revised to read "Production delivered to your refinery and NYMEX price is an unreasonable value."

B. In paragraph (e)(1)(ii), the words "an index price" are removed and the

words "the NYMEX price" are added in their place.

C. In paragraph (e)(1)(iii), the words "the index price" are removed and the words "the NYMEX price" are added in their place, and paragraphs (a) through (d) are revised to read as follows:

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

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(a) *Production from leases in California or Alaska.* Value is the NYMEX price, adjusted for applicable location and quality differentials and transportation costs under § 206.112.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph (b) provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(1) or (b)(2) or (b)(3) 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.

(1) If you have an MMS-approved tendering program, you must value oil produced from leases in the area the tendering program covers at the highest winning bid price for tendered volumes.

(i) The minimum requirements for MMS to approve your tendering program are:

(A) 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; and

(B) You 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.

(ii) If you do not have an MMS-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section. After you select either paragraph (b)(2) or (b)(3) 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) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) 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.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price, adjusted for applicable location and quality differentials and transportation costs under § 206.112.

(4) If you demonstrate to MMS" satisfaction that paragraphs (b)(1) through (b)(3) 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 NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 206.112.

(2) If the MMS 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, MMS may terminate or modify use of the roll under paragraph (c)(1) of this section at the end of each 2-year period following [EFFECTIVE DATE OF THE FINAL RULE] through notice published in the **Federal Register** not later than 60 days before the end of the 2-year period. MMS will explain the rationale for terminating or modifying the use the roll in this notice.

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

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4.-5. In § 206.104, the section heading and paragraphs (a) introductory text, (a)(3), (c), and (d) are revised to read as follows:

§ 206.104. What publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including, but not limited to:

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(3) Publications that use adequate survey techniques, including development of estimates based on daily