

Indian Oil Valuation Negotiated Rulemaking Committee

Meeting 6, April 17-18, 2013

Building 85 Auditorium, Denver Federal Center, Lakewood Colorado

Meeting Summary (Final - As of 5/8/13)

Attendees

Committee Members and Alternates

Bruce, Loudermilk, Bureau of Indian Affairs

John Barder, Office of Natural Resources Revenue (ONRR)

Theresa Walsh Bayani, ONRR

Deborah Gibbs Tschudy, ONRR (Designated Federal Officer)

Paul Tyler, ONRR

Daniel Riemer, American Petroleum Institute

Morris Miller, American Petroleum Institute (Alternate)

Dee Ross, Chesapeake Energy

Kathleen Sgamma, Western Energy Alliance (Alternate) (Day 2)

Jeanne Whiteing, Blackfeet Nation

Roger Birdbear, Land Owners Association (Day 1)

Darrel Paiz, Jicarilla Apache Nation (Alternate) (Day 1)

Claire Ware, Joint Business Council of Shoshone and Arapaho Tribes

Perry Shirley, The Navajo Nation

Akhtar Zaman, The Navajo Nation (Alternate)

Facilitators

Chris Moore, CDR Associates

Laura Sneeringer, CDR Associates

Observers

Karl Wunderlich, ONRR

Steve Simpson, DOI Office of the Solicitor, Washington, DC

John Kunz, DOI Office of the Solicitor, Denver

Bridget Radcliff, U.S. Institute for Environmental Conflict Resolution

Tim McLaughlin, Nordhaus Law Firm, LLP

Harvey Lucero, Jicarilla Apache Tribe

Sharon Paiz, Jicarilla Apache Tribe

Bob Wilkinson, Council of Petroleum Accountants Societies

Dennis Cameron, WPX Energy

Grady Ward, WPX Energy

Joy Lujan, National Park Service

Agenda Topics

Wednesday, April 17, 2013 9:00 AM – 5:00 PM

- Welcome, Recap of Previous Discussions and Agenda Review
- Overview of the Ad Hoc Subcommittee's Discussions
- Overview of Payors Per Field and Major Portion Calculations at the Reservation and Field Level, *John Barder, ONRR*
- Rationale for ONRR's Requirement for At Least 3 Payors in Major Portion Calculations, *John Kunz and Stephen Simpson, DOI Office of the Solicitor*
- Overview of Initial Concepts for Oklahoma, *John Barder, ONRR*
- Federal Government/Tribes/Allottees and Industry Caucuses to Deliberate on Morning Discussions
- Overview of a "Straw Man" Rule Developed by ONRR, *Debbie Gibbs Tschudy, ONRR*
- Federal Government/Tribes/Allottees and Industry Caucuses to Discuss and Respond to the Straw Man
- Response from Industry on the Straw Man and Discussion
- Review of Potential Criteria and Initial Area Designations for The Navajo Nation, Wind River, Fort Berthold and Uintah and Ouray Reservations

Thursday, April 18, 2013 8:30 AM – 3:00 PM

- Agenda Review
- Discussion on the Proposed Oklahoma Index Price Methodology and Next Steps
- Discussion on the Methodology to Designate Areas
- Discussion on Reporting of Crude Type and API Gravity
- Federal Government/Tribes/Allottees and Industry Caucuses to Refine the Straw Man
- Report Out From Caucuses and Discussion of Next Steps, Including Determining Ad Hoc Subcommittees

Action Items

The following Ad Hoc Subcommittees were established. They will provide recommendations on components of the proposed rule at the June 4-5, 2013 meeting, if not before. Some Ad Hoc Committee-specific action items are included.

Crude Type and API Gravity Reporting – This group will recommend how crude type and API gravity should be reported. Members include: Theresa Walsh Bayani, Kevin Barnes, Bob Wilkinson and Morris Miller.

- Theresa Walsh Bayani will determine what specific crude type and API gravity information BLM collects and determine whether there is a way for ONRR to obtain this data.
- Bob Wilkinson will present this as an emerging issue at a COPAS meeting the week of 4/21, and will determine if others want to be part of the problem-solving conversation.

Oklahoma – This group will refine an index-price formula methodology. Members include: Marcella Giles, Eddie Lagrone, John Barder, Paul Tyler, Dee Ross, Dan Riemer and Clare Ware.

Ft. Berthold – This group will use initial screening criteria to recommend appropriate area designations within the reservation. Members include: Roger Birdbear, Fred Fox (Fort Berthold Tribal Vice Chairman of the Executive Oil & Gas Committee and Chairperson of the Natural Resources Committee), John Barder, Jeff Hunt (BIA), Morris Miller, Bill Woodard (WPX Energy), Kathleen Sgamma and Dan Riemer.

Uintah and Ouray – This group will use initial screening criteria to recommend appropriate area designations within the reservation. Members include: Manuel Myore, Carey Doyle (Production Engineer for the Tribe), John Barder, Rob Thompson and Kathleen Sgamma.

Wind River – This group will review major calculations for the suggested designated areas identified at the meeting, and refine the recommendation if needed. Members include: Clare Ware, John Barder and Dan Riemer.

- John Barder will conduct a major portion analysis for the two recommended areas and share this information with Clare Ware and Dan Riemer. Further discussion will be scheduled if requested. The two areas include: 1) Circle Ridge, Maverick Springs, Rolff Lake, Sheldon NW, and Sheldon and 2) Steamboat, Pilot Butte, Winkleman, and Lander.

The Navajo Nation – The recommendation is to have 2 areas: 1) the Greater Aneth Field and 2) the rest of the reservation. A group is not needed unless any Committee Members request to further discuss these designations.

Summary of Meeting Discussions

The meeting began with requested background information on the number of payors per field, a comparison of major portion calculations at the reservation and field levels, rationale for why 3 payors are required by ONRR for a major portion analysis and an initial recommendation for how to conduct a major portion analysis in Oklahoma. ONRR then shared a straw man proposal for the Rule. Through a series of caucuses and full group discussion, the Committee refined areas for further problem-solving and outlined next steps. They also began to review potential designated areas for four of the reservations.

Note that all meeting presentations and handouts will be available on the Committee website at: http://www.onrr.gov/Laws_R_D/IONR/

Background Information

Overview of Payors per Field and Major Portion Calculations at the Reservation and Field Level

John Barder, of ONRR, conducted a detailed analysis to determine the number of payors per field and amount of additional royalties that industry would be required to pay at the field and reservation level, at a 75% major portion. This involved using lease data collected from BIA and Wind River and The Navajo Nation Tribes, and joining it to ONRR's 2011 calendar year data. Detailed maps showing leases, fields and key infrastructure were also provided by BIA, along with additional maps from other Committee members. For each reservation, John also provided information on the oil types, gravity range and the transportation allowances reported. Specifically, he shared the greatest transportation differentials for any specific month in 2011. He conducted this analysis for the following tribes: Blackfeet, Wind River, Uintah and Ouray, The Navajo Nation and Fort Berthold. Necessary data was not available to conduct this analysis for the Jicarilla Apache Tribe. Later in the meeting, John provided data describing the difference in royalties if a 75% and 50% +1 major portion calculation was applied at the reservation level.

Only the reservation level calculation normalized for API gravity. The major portion calculations did not take crude type into account. In areas where there are different crude types at the reservation or field level, the amount of additional royalties will likely decrease (i.e., there will be less royalty liabilities).

Transportation allowances were netted out of the production values for both the reservation and field level major portion calculations. Transportation costs reported on the 2014 are only for the royalty share. In order to normalize these costs before calculating a unit price, transportation costs reported on the 2014 were increased to 100% of sales volume reported on the 2014 and that value was then subtracted from the total sales value reported on the 2014. A unit price was then calculated by dividing the adjusted sales value by the sales volume reported on the 2014. This adjusted unit price is then added to the array.

If a company does not report transportation allowances their production went unadjusted into the array. Transportation factors were not incorporated into the analysis. The difference between the two is described below.

- A **transportation allowance** is taken when the lessee transports production to an off-lease sales point. The purpose of the transportation allowance is to determine market value at the lease (or FMP) when production is sold away from the lease (or downstream of the FMP).
- A **transportation factor** is ONRR's terminology for when a lease sale contract contains a location adjustment to a market center or published index price. The buyer applies a market adjustment to the market center price to account for location and quality differences between the lease market and the market center. In other words, the contract deducts a certain transportation cost per barrel since the buyer will need to pay to transport the oil.

In John's opinion, the reason royalty liabilities are significantly less at the field than reservation level is that many fields only have one payor. In this field level analysis, if there is only one payor, the one payor's price was the major portion price and so there were no additional royalty liabilities. In order to meet the intention of the major portion requirement and comply with the Trade Secrets Act (see below), at least 3 payors are needed. An area level (i.e., combination of fields) will likely have more royalty liabilities than the field level and less than the reservation level. Ft. Berthold is the only reservation in which liabilities are higher at the field level than the reservation level. This is likely because there are fewer fields with only one payor and there are multiple transportation options.

Q. How does The Navajo Nation's royalty in kind (RIK) approach affect the major portion? A. 90% of The Navajo Nation's oil is taken as RIK. Companies are required to report a royalty value, which equates to the unit price that they sold the non-RIK (non-royalty interest) volumes times the sales volume multiplied by the royalty rate. . Those that provide oil as RIK report it as transaction code "06" on the MMS- 2014 and those that sell it to others, the remaining 10%, report it as transaction code "01 sales". All royalty lines with transaction codes "01 and 06" are included in the calculation of the major portion price. The numbers in the presentation do not fully represent the royalties The Navajo Nation would receive because approximately 90% of The Navajo Nations oil is taken in-kind.

Q. Why does the amount of royalty liabilities vary so much between reservation and field on Wind River? A. After a closer analysis of the Wind River data, John described that it seems to be based on where the 75% major portion line falls. There is an average of 20 lines for the reservation. Marathon generally reports 3-4 of these lines and is always at the top of the array. Only one of the Marathon production lines generally reports a transportation allowance. Because the top line has the most volume, the second line ends up being the 75% major portion amount and 50% is about the 4th or 5th line.

Rationale for ONRR's Requirement for At Least 3 Payors in Major Portion Calculations

John Kunz and Stephen Simpson, DOI's Office of the Solicitor, described why ONRR cannot publish major portion values when the array used for the calculations includes less than 3 payors. The primary reason is that all federal employees and tribes that have cooperative agreements with ONRR must comply with the Trade Secrets Act. Private companies and states are not held to the Trade Secrets Act. The statute prohibits revelation or release of information considered to be a trade secret by a Federal employee or agency. ONRR and its employees could face criminal violations if prosecuted and convicted of releasing such information. The Solicitors Office strongly recommends that its clients do not make any assumptions when dealing with a criminal statute. DOI's policy states that financial and commercial data is proprietary. If information needs to be shared, its policy is to ask companies for written approval. If all companies gave written consent then ONRR could publish major portion values. However, it only takes one company to refuse, and then ONRR cannot complete its trust responsibility.

In addition to potential criminal violations, it would be possible for a party to use the value data provided by ONRR, combine it with other publicly available data, and determine the price that other industry members are selling their oil. This could lead to competitive harm for the seller or purchaser.

Rationale for Use of Designated Areas

Lease terms provide for the “highest price paid or offered at the time of production for the major portion of the oil of the same gravity...and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated...” It was highlighted that the regulation does not say anything about “quality” or “location”. It does include “like-gravity”.

The current Indian Gas Valuation Rule established ONRR-designated areas to define fields. It states that the Secretary has the discretion to define an “area” that provides a reasonable sample of arm’s length contracts, and that this is not a new authority (1988 Indian Oil and Gas Rule, 53 Federal Register, 1230 - 1284). This practice has been used for 40-50 years, going back to the USGS Conservation Manual in the 1970’s. There is testimony in sworn litigation demonstrating that designated areas have been used historically. “Field” does not only mean state designated fields.

In addition, authority lies with the Secretary’s trustee role to choose alternatives in the best interest of the Indian tribe (Jicarilla Apache Tribe v. Supron Energy Corp). In other words, if the Secretary has two options, it has to choose the option that is in the best interest of the Indian beneficiary.

General Agreements on the Proposed Rule Straw Man

While Committee members need the opportunity to consult with their constituents to obtain their approval, there was general agreement on the following components:

- ONRR will conduct a major portion array for each month, by August 31 following the end of the calendar year and publish the major portion price on the ONRR website (not the Federal Register). This calculation will net transportation allowances, separate different oil types into different major portion calculations and normalize for gravity.
- Industry will report crude oil type (e.g. sweet, sour, asphaltic, black wax, yellow wax) and API gravity. While Committee members agree that this information is needed there is not yet agreement on the reporting methodology (see below).
- Interest will not accrue until 60 days after ONRR publishes the major portion values – consistent with the Indian Gas Rule.
- Seven of the tribes will have major portion conducted at the reservation level. They make up less than 2.6% of total calendar year 2012 royalties. They include: Michigan, Crow, Ute Mountain Ute, Blackfeet, Turtle Mountain, Fort Peck and Jicarilla Apache.

Areas for Further Discussion on the Proposed Rule Straw Man

Definition of Major Portion as 75% or 50% +1 Barrel

Industry requested time to consult with its constituents on whether it could agree with a 75% major portion. This discussion was primarily focused on the reservation level designation. In the past, industry has supported a 75% major portion for field level designations. While major portion is defined as 50% +1 barrel in the current Indian Oil Rule, it is defined as 75% in the Indian Gas Rule.

Reporting Crude Type and API Gravity

In order to conduct major portion, ONRR needs oil type (approx. 5 options - sweet, sour, asphaltic, black wax, yellow wax) and API gravity from the facility measurement point (FMP), both at the lease level. There needs to be a compliance mechanism, including a required timeframe for reporting and consequences for not doing so, because ONRR has to have this information to conduct the major portion calculation. There were some differing ideas on how this information should be reported, which will be discussed further by the Ad Hoc Subcommittee.

Crude Type Ideas

- 1) One time reporting. The Rule could say “within 60 days of effective date of the Rule, you must report crude oil type for all leases you operate”. A timeframe would be established for new leases as well. An administratively easy process is preferred (e.g., through a web-based entry form that can easily be incorporated into ONRR’s system). ONRR could maintain a list of leases with oil types and there could be a periodic review every few years, if needed, to ensure information remains accurate. The only reservation where this could be problematic is Uintah and Ouray as it may have different types of oil within the same lease.
- 2) Start with ONRR assumptions of crude oil type based on API gravity, and then ask companies to address exceptions. This puts the burden on the lessee to provide input if it believes that the oil type is different than identified by ONRR. Language to make reporting enforceable would need to be included.
- 3) Report crude type on the MMS-2014 using new product codes.

API Gravity Ideas

The primary ideas for reporting API gravity are:

- 1) Report on the MMS-2014 using the existing quality measurement field (ONRR’s preference) - The OGOR reports API gravity at the lease or lease agreement level. It is challenging for ONRR to go from the lease agreement to the lease level, as this would require matching wells to leases and leases to agreements. There could be legal challenges against a complicated process involving two different reporting entities (operator and payor). Also, lease/agreement reporting is industry’s greatest area of misreporting. API gravity was reported on the MMS-2014 until 2001.
- 2) Pull the information from the OGOR, which is filled out by operators (industry’s preference) - Industry representatives have concerns that the people who complete the MMS-2014 reporting may have difficulty gathering the API gravity at the FMP from operators, and reporting the correct API gravity due to the different levels for which API gravity is measured and used.
- 3) Obtain information from BLM, if available.

Methodology for Designating Areas

Industry’s initial recommendation on how to proceed if there are less than 3 payors in a field was to:

- 1) Have ONRR request written approval from companies to publish the calculated major portion price.
- 2) If approvals are not provided, ONRR would determine value based on benchmarks from comparable sales. ONRR would review sales from the field or area with like quality/crude to the nearest market center, and transportation would be normalized. In cases, in which there is one payor, ONRR would need to determine a benchmark since a major portion cannot be determined with one payor.

This idea did not gain significant traction as it was not clear how ONRR would obtain benchmarks and share information in a transparent way. It could be burdensome from an administrative standpoint.

When the Committee was reviewing specific reservations to discuss potential designated areas, the question was raised whether the objective was to apply criteria in order to: 1) combine fields solely in order to have 3 or more payors; or 2) combine fields based on criteria, which could be larger than 3 payors. One member highlighted questions for the Committee to consider as it determines the combining methodology:

- What is the gross proceeds price for each field?
- What is the highest price paid or offered for the major portion of like-gravity crude for each field?
- What are the implications of expanding beyond the field?

The Tribe/Allottee/Government group described that major portion is broader than just having three payors. There must be a clear, defensible basis for determining a major portion price. The driving force is not the number of payors, but reasonable criteria for combining fields.

Committee Members shared other reasons for combining fields to meet criteria, along with other combining considerations:

- The number of payors might change over time, which would require ONRR to continually re-update the field combinations. This is problematic from a consistency, transparency and administrative ease standpoint.
- It is challenging for ONRR to combine fields based on dynamic changes such as multiple transportation options. If industry is reporting its transportation allowance, the multiple transportation options should balance out.
- Many field combinations are easy to determine due to common market and other factors. A challenge arises, however, when there are outliers or anomalies (e.g., a field that transports oil by truck nearby other fields that transport oil by rail). It is not clear what to do with these fields.
- One company may be paying on behalf of different working interests in the lease. If industry has each working interest owner report their own royalty, the number of payors would increase.

Initial Discussion on Designated Areas for Specific Reservations

The Committee reviewed proposed screening criteria shared at the October 2012 meeting, as a methodology for combining fields. They then reviewed maps for the four reservations being considered for a major portion calculation at designated areas smaller than the reservation. The Committee also discussed Oklahoma, for which an index price formula approach is recommended. The group shared initial, relevant knowledge.

The proposed criterion includes:

- Reasonable sample size (>2 payors)
- Same crude type (e.g., sweet, sour, asphaltic, black wax, yellow wax)
- Same gravity (e.g., 40-45, below 40 and above 45)
- Same geographic area
- Same market served
 - access to similar infrastructure (e.g., refineries, pipelines, rail lines, major roads)
 - similar geography (e.g., no challenging geographical divides such as large rivers)
 - similar geology

The Navajo Nation

Information Related to Criteria

- 97% of production is in one field and reservoir, the Greater Aneth Field in the Paradox Basin. The Greater Aneth has 6 payors. The rest of the reservation includes 24 fields, with less than 3 payors on 22 fields. Some of these are undesignated fields, which are in the Eastern part of the reservation.
- The oil quality is similar in the Greater Aneth.
- All oil is sent to the same refinery, using a similar transport system.

Initial Area Designation Ideas

- Two areas: 1) the Greater Aneth field and 2) the rest of the reservation.

Uintah and Ouray

Information Related to Criteria

- There are 18 fields and only 4 that have 3 or more payors.
- The majority of oil production is concentrated in the Altamont (4 payors) and Bluebell (4 payors) areas. There is another production area south of a fault line.
- All oil is transported by truck to Salt Lake City, where some of the most profitable refineries in the world are located. While there are pipelines nearby, the type of oil produced on Uintah and Ouray—black and yellow wax—cannot be added to the pipeline.
- The price range between oil types is black wax (\$0.50 - \$0.75) to yellow wax (\$1.50 - \$1.75). They are similar in API gravity, but not like-gravity. Sometimes paraffin is worth more than oil.

Information Needs/ Potential Contacts

- The Committee did not know where different oil types are geographically located.
- The Committee did not know whether the remaining areas with less than 3 payors—outside of Altamont and Bluebell—are in clusters or are dispersed far apart.
- Manuel Myore and Rob Thompson will likely be able to provide more information.

Initial Area Designation Ideas

- The full reservation, with one major portion calculation for yellow wax and one for black wax.
- Two areas: 1) Altamont and Bluebell and 2) all fields south of the fault line.
- Two areas: 1) Altamont and 2) Bluebell. The remaining one or two-payor fields could be added to these areas based on geographic proximity.
- Three areas: 1) Altamont, 2) Bluebell, and 3) outlier fields.

Fort Berthold

Information Related to Criteria

- There are 21 fields on the reservation and 10 have 3 or more payors.
- The oil is predominantly sweet, but some wells have high hydrogen sulfide.
- The Missouri River divides the reservation. North of the River is the Vanhook Area (e.g., Big Bend, Reunion Bay and Vanhook fields).
- There are multiple transportation options – pipelines, rail and trucking. There are rail stations at Newtown, Charleston and Eddiesville. There will be 14 rail options in Ft. Berthold in the near future. All Eastern producers truck their oil. There is an area south of the Missouri River that transports by truck. This area also has oil with higher hydrogen sulfide than that found in other areas of the reservation.
- The Bakken is dynamic from a market standpoint. At a recent Platts Conference, information was shared about how the Bakken pipeline takeaway volumes have been reduced by 40-45%. Rail is increasing and taking business away from pipeline transport because there are so many different market options. Also, the Ft. Berthold Tribe is building a refinery and has broken ground on the facility.

Information Needs/ Potential Contacts

- The Committee needs to know more information about the Northeast, Northwest and the East portions of the reservation (mostly fee land).
- More discussion is needed on the Parshall field (2 payors) to determine what area it should be combined with.
- Bill Woodard (WPX Energy) and Jeff Hunt (BIA) are very knowledgeable of this area. A tribal representative needs to be included in discussions on determining areas on the reservation. Fred Fox was identified after the Committee meeting.

Initial Area Designation Ideas

- Two areas: 1) the Vanhook Area North of the river combined with other nearby single payors and 2) south of the river. The areas would need to be further narrowed by oil type.
- Three areas: 1) the Vanhook Area North of the river combined with other nearby single payors, 2) south of the river that is generally transported by rail or pipeline; 3) south of the river that is generally trucked and has different sulfur content.

Wind River

Information Related to Criteria

- All 9 fields have less than three payors; one has 2 payors.
- The oil type is predominantly Wyoming asphaltic sour.
- There seems to be similar pricing for multiple fields even though they are in different locations.

- All production serves one market. Casper is the predominant refinery, though some oil goes to Rawlins too.
- All fields feed into it Marathon's Red Butte Pipe Line System. Four fields are located along the pipeline. Some fields need to truck oil approximately 14 miles to get to the pipeline.
- Lander is far from other areas and is connected to Red Butte Pipe Line System by a producer owned line.
- There is a ridge that could lead to several combinations of fields.

Initial Area Designation Ideas

- The full reservation
- Two areas: 1) Circle Ridge, Maverick Springs, Rolff Lake, Sheldon NW and Sheldon and 2) Steamboat, Pilot Butte, Winkelman and Lander. Geographically, these two areas are separate. The goal is to cluster smaller fields together with the two largest fields on the reservation.

Oklahoma Index-Price Methodology

Marcella Giles and Eddie Lagrone recently held two consultations with lessors, with approximately 100 participants. There was no dissention on the proposal to use a NYMEX index price methodology to conduct a major portion analysis. They believe that this methodology will result in the highest price for tribes and allottees and eliminates reporting for the producers. Tribes have not participated in initial discussions on the methodology to calculate a major portion, and will likely need to be consulted prior to finalizing the methodology for Oklahoma in the final rule.

The basis of the formula would be tied to the WTI NYMEX price at Cushing, Oklahoma. Normalization of API gravity may be necessary. Some options include:

- Highest daily closing spot price for WTI NYMEX at Cushing, Oklahoma (i.e., the highest price day in the month)
- NYMEX WTI calendar month average
- WTI Front
- Half way between the highest daily closing spot price and the calendar month average (represents the 75th percentile)
- WTS Midland (for Oklahoma sour) – It was noted Sour West Texas Midland is the nearest market center that would be equivalent to OK, but it is not a good alternative for sour. A sour to a sweet differential may be more appropriate.

Industry members described that they are willing to look at a surrogate index price as way to establish major portion for OK because of the complexity of leases in OK. However, they indicated that a transportation adjustment or location differential is probably needed to help establish value, similar to what was used in the Indian Gas Rule. The major portion price for OK needs to be examined to determine if an adjustment is needed and whether it should be fixed or variable. To determine an appropriate offset, it would be helpful to compare, on a monthly basis: 1) the average volume weighted price per barrel for all payors at the 75% and 50% +1 major portion and 2) the WTI NYMEX for same time period. If the roll is used with NYMEX Calendar Month Average in contracts, or if the Posting-Plus Premium is used with posted prices in contracts, then the roll should be used with a NYMEX index price methodology. John Barder compiled this information and shared it with the Committee. It will be discussed in detail with the Ad Hoc Subcommittee.

Applicability of an Index-Priced Formula to Current Leases in Oklahoma

Most of the current leases in Oklahoma were issued under the 1945 Act for Civilized Tribes or the Stigler Act, which are gross proceeds leases that do not contain a major portion provision or a provision that the Secretary can determine value. The index price formula methodology will not adjust lease terms and cannot be retroactive. Therefore, in the future, the only way the index price formula will be used is if the lessor agrees to modify their lease to incorporate a major portion provision or allows the Secretary to determine value. The major portion (and index priced methodology if it proceeds) will apply to any standard lease forms.