

would adjust for location differences between the lease or unit and the index pricing and publication point?

- In the interest of simplifying the determination and verification of location adjustments, should ONRR consider prescribing either a fixed differential amount per unit volume (thousand cubic feet (Mcf) or million British thermal units (MMBtu)) or a fixed percentage to be deducted from the index value to account for location differences?

- Should ONRR apply a fixed differential amount per unit volume to all production in a particular area or that is transported through a particular pipeline? Would a flat percentage of the index value (perhaps with a cap) be preferable, either on a regional or nationwide basis?

### C. Processed Gas and Processing Allowances

The ONRR is considering accounting for the value of liquid hydrocarbons contained in the gas stream by applying an adjustment or “bump” to the index price, applicable to residue gas when gas is processed, in lieu of valuing residue gas and extracted liquid products separately, calculating the actual processing costs, and deducting those costs from the value of the extracted liquids (the procedure required under 30 CFR 1206.153(a) and 1206.158 through 1206.159). This adjustment could be based on, or could incorporate, a number of components, including the following:

- Gas quality (either Btu content or gallons per Mcf (GPM)).
- The differential between the gas price and the oil or natural gas liquids (NGL) price similar to a “frac spread” or a “processing margin.”
- Certain plant operation factors, such as shrinkage, producer processing costs, and plant operations costs.

We also seek input regarding whether such an approach could eliminate the burden of accounting for allowable costs to process gas and reduce or eliminate the potential for disputes over unbundling of gas plant charges, without reduction in royalty value. The ONRR could calculate this adjustment on a monthly basis and make it available on our website expressed in the form of a price per unit volume (MMBtu or Mcf).

ONRR could maintain current reporting requirements for processed gas and NGLs but establish a fixed processing allowance. This fixed allowance could be either on a nationwide basis for all Federal gas or on a narrower basis, such as offshore

and onshore leases; offshore regions and onshore basins; or gas-plant-specific.

We seek input regarding the advantages and disadvantages of simplifying processed gas royalty reporting and payment by either of the aforementioned methods. We also are interested in other methodologies that would simplify the reporting associated with gas processing allowances or, if possible, eliminate the allowances by substituting a market-based proxy to reflect the value of liquid hydrocarbons contained in the gas stream.

### D. Other Alternatives

The ONRR also is interested in receiving comments on any other alternative methodologies. If you propose a methodology different from those discussed above, please explain how the suggested methodology would meet the goals outlined above and why you believe your methodology is the best alternative.

In addition, ONRR requests your input on how the various methodologies would affect your business practices, bookkeeping, *etc.*

Dated: May 23, 2011.

**Rhea Suh,**

*Assistant Secretary for Policy, Management and Budget.*

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**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

#### 30 CFR Parts 1202 and 1206

[Docket No. ONRR-2011-0004]

RIN 1012-AA00

#### Federal and Indian Coal Valuation

**AGENCY:** Office of Natural Resources Revenue (ONRR), Interior.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR) requests comments and suggestions from affected parties and the interested public before proposing changes to the existing regulations governing the valuation of coal produced from Federal and Indian leases, for royalty purposes. The existing Federal and Indian coal valuation regulations have been in effect since March 1, 1989, with minor subsequent amendments relating primarily to the Federal Black Lung Excise Taxes, abandoned mine lands (AML) fees, state and local severance taxes, and washing and transportation

allowances provisions. These existing coal valuation regulations also have not kept pace with significant changes that have occurred in the domestic coal market during the last 20-plus years.

This notice is intended to solicit comments and suggestions on possible new methodologies to establish the royalty value of coal produced from Federal and Indian leases. The ONRR also plans to hold public workshops to discuss changes to the coal valuation regulations after the written comment period closes, and ONRR has had a reasonable time to review and analyze the comments. The ONRR will announce any public workshops in a future **Federal Register** notice.

Getting feedback upfront and involving all affected stakeholders in the rulemaking process are the hallmarks of good government and smart business practice. The intention of this rulemaking process is to provide regulations that would offer greater simplicity, certainty, clarity, and consistency in production valuation for mineral lessees and mineral revenue recipients; be easy to understand; decrease industry’s cost of compliance; and provide early certainty to industry and ONRR that companies have paid every dollar due. The ONRR intends that the final regulations will be revenue neutral.

**DATES:** You must submit your comments by July 26, 2011.

**ADDRESSES:** You may submit comments on this advance notice by any of the following methods. Please use the Regulation Identifier Number (RIN) 1012-AA00 as an identifier in your message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter ONRR-2011-0004, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this advanced notice of proposed rulemaking. The ONRR will post all comments.

- Mail comments to Hyla Hurst, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61013C, Denver, Colorado 80225.

- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** For questions on procedural issues, contact Hyla Hurst, Regulatory Specialist, ONRR, telephone (303) 231-3495. For questions on technical issues, contact

Richard Adamski, Asset Valuation, ONRR, telephone (303) 231-3410.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Secretary of the Interior's authority to establish the value of coal production through regulations is contained in the Indian Mineral Leasing Act of 1938, the Mineral Leasing Act, and the Mineral Leasing Act for Acquired Lands (25 U.S.C. 396d; 30 U.S.C. 189 and 359). In addition, virtually all Federal and Indian coal leases expressly reserve to the Secretary the authority to establish the reasonable value of coal production or provide that the royalty value of coal be set by regulation.

In 2007, the Royalty Policy Committee (RPC) Subcommittee on Royalty Management issued a report titled "Mineral Revenue Collection from Federal and Indian Lands and the Outer Continental Shelf." The Subcommittee's report recommended "revis(ing) and implement(ing) the regulations and guidance for calculating prices used in checking royalty compliance for solid minerals, with particular attention to non-arm's-length transactions."

The existing Federal and Indian coal regulations have been in effect since 1989, with minor amendments to Federal Black Lung Excise Taxes, AML fees, state and local severance taxes (55 FR 35427, August 30, 1990), and washing and transportation allowances provisions (61 FR 5448, February 12, 1996). In 1996, the royalty valuation regulations for Indian leases were separated from the regulations for Federal leases because of amendments to the latter removing certain form-filing requirements for the coal washing and transportation allowances that were retained for Indian leases. The ONRR continues to evaluate the effectiveness and efficiency of its regulations, particularly with regard to non-arm's-length valuation and ramifications spurred by changes in the coal mining industry, including increasing vertical integration of mining and power production and increasing production by coal cooperatives. Further, ONRR's experience in enforcing the regulations indicates that they can be cumbersome because, to properly determine the value for royalty purposes, ONRR must analyze literally thousands of sales, transportation, and processing transactions each month. Performing this analysis is costly and burdensome for both the Federal Government and the regulated industry and can lead to disputes regarding valuation methodologies.

The 1989 coal valuation regulations were written to establish value based on transactions between independent, non-affiliated parties with opposing economic interests. The Department of the Interior has long held the view that the sales prices agreed to in arm's-length transactions are the best indication of market value. The 1989 regulations reflect that view. Under the regulations at 30 CFR part 1206, subparts F and J, the value of most Federal and Indian coal is based on the gross proceeds accruing to the lessee under the lessee's arm's-length sales contracts. See 30 CFR 1206.257(b) (for Federal leases) and 1206.456(b) (for Indian leases).

If the lessee disposes of coal under a non-arm's-length arrangement, the regulations prescribe an ordered series of "benchmarks" that look to outside indicia of market value. The value of the coal is based on the first applicable benchmark. Under the first of those benchmarks, the gross proceeds accruing to the lessee under its non-arm's-length contract will be accepted as value, if they are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts for the sale or purchase of like-quality coal produced in the area, between buyers and sellers neither of whom is affiliated with the lessee. The regulations also prescribe criteria for determining comparability. Regulations at 30 CFR 1206.257(c)(2)(i) (for Federal leases) and 1206.456(c)(2)(i) (for Indian leases) prescribe identical criteria for determining comparability as follows: "In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal \* \* \*" If the first benchmark does not apply, the next benchmark establishes value based on "[p]rices reported for that coal to a public utility commission" (30 CFR 1206.257(c)(2)(ii) and 1206.456(c)(2)(ii)). If the second benchmark does not apply, value would be established based on "[p]rices reported for that coal to the Energy Information Administration of the Department of Energy" (30 CFR 1206.257(c)(2)(iii) and 1206.456(c)(2)(iii)). If the third benchmark does not apply, then value is based on "other relevant matters," which include, but are not limited to, "published or publicly available spot market prices" or "information submitted by the lessee concerning circumstances unique to a particular

lease operation or the saleability of certain types of coal" (30 CFR 1206.257(c)(2)(iv) and 1206.456(c)(2)(iv)). If none of the four preceding benchmarks apply, then "a net-back method or any other reasonable method shall be used to determine value" (30 CFR 1206.257(c)(2)(v) and 1206.456(c)(2)(v)).

Under both arm's-length and non-arm's-length sales arrangements, the lessee may deduct applicable transportation and coal washing allowances. See 30 CFR 1206.257(a), 1206.258 through 1206.259, and 1206.261 through 1206.262 (for Federal leases); 30 CFR 1206.456(a), 1206.457 through 1206.458, and 1206.460 through 1206.461 (for Indian leases).

##### II. Public Comment Procedures

The ONRR may not be able to consider comments that we receive after the close of the comment period for this advance notice of proposed rulemaking, or comments that are delivered to an address other than those listed in the **ADDRESSES** section of this notice. After the comment period for this advance notice closes and ONRR has considered the comments, we plan to open a second public comment period, which we will announce in the **Federal Register**. The notice will focus on issues identified in the first public comment period and will include information about the public workshops.

###### A. Written Comment Guidelines

We are particularly interested in receiving comments and suggestions about the topics identified in section III, Description of Information Requested. Your written comments should: (1) Be specific; (2) explain the reason for your comments and suggestions; (3) address the issues outlined in this notice; and (4), where possible, refer to the specific provision, section, or paragraph of statutory law, case law, lease term, or existing regulations that you are addressing.

The comments and recommendations that are most useful and have greater likelihood of influencing decisions on the content of a possible future proposed rule are: (1) Comments and recommendations supported by quantitative information or studies; and (2) comments that include citations to, and analyses of, the applicable laws, lease terms, and regulations.

###### B. Public Comment Policy

Executive Order (EO) 13175 requires Federal agencies to consult with Indian tribes during the development of regulatory proposals. Section 5a of EO 13175 states that each agency shall have

an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Changes to the valuation of Indian coal for royalty purposes have tribal implications.

The ONRR has sent an invitation to the revenue receiving tribes and mineral owner associations inviting them to attend one of three consultation meetings. The schedule is:

1. May 15, 2011, in Albuquerque, NM, starting at 1 p.m. mountain time.
2. May 26, 2011, in Denver, CO, starting at 1 p.m. mountain time.
3. June 9, 2011, in Oklahoma City, OK, starting at 9 a.m. central time.

We will discuss ONRR's plan to amend the Federal and Indian coal product valuation regulations. The ONRR mailed invitation letters for the tribal consultations on April 21st, and ONRR believes these meetings comply with the EO 13175 consultation requirement.

Our practice is to make comments, including names and addresses of respondents, available at <http://www.regulations.gov>. Individual respondents may request that we withhold their individual address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### III. Description of Information Requested

We are interested in submission of proposals that will lead to improved efficiencies for both lessees and ONRR auditors, including state and tribal auditors under delegated audit agreements with ONRR. In considering potential proposed changes to the existing Federal and Indian coal royalty valuation regulations, we have three goals in mind, as follows:

- Provide clear regulations that are easy to understand and that are consistent with fulfilling both the Secretary's responsibility to ensure fair value for the public's resources and the Secretary's trust responsibility to Indian mineral owners.

- Provide methodologies that are as efficient as possible for lessees to use.
- Provide early certainty that correct payment has been made.

Accordingly, ONRR is seeking public comment and recommendations on the following specific issues:

#### A. Alternative Valuation Methods

In the existing regulations as discussed above, value is generally based on the lessee's arm's-length gross proceeds. The gross proceeds are the total monies and other consideration accruing to the lessee for the production and disposition of the coal produced (30 CFR 1206.251 and 1206.451). As noted previously, allowable washing and transportation costs may be deducted from gross proceeds in determining royalty value. Accounting for washing and transportation costs places some accounting burden on reporters and makes the audit process more lengthy and complex. In an effort to simplify the valuation and auditing process, ONRR is considering whether there are valuation methods that would (1) Be more efficient than the current method of calculating value on gross proceeds (minus actual costs); (2) require less accounting and auditing work; and (3) still establish a value that reflects, or very closely approximates, actual market conditions. We seek input on the following questions:

- What alternatives to gross proceeds would you recommend?
- Would a dollars-per-energy content unit (e.g., dollars-per-million British thermal units (\$/MMBtu)) or dollars-per-weight unit (e.g., \$/ton) valuation method be reasonable? If so, how should such a value be established?
- Should such "fixed" royalty values be revised from time to time? If so, on what basis, and at what time or on what occasions?
- Are there published index prices that accurately reflect the actual market value of coal? If so, what are those index prices and to what areas of the country or to what types of coal do they apply?
- Does the concentration of Federal or Indian production in some areas of the country create any potential problems with relying on index prices in those areas, now or in the future?

#### B. Non-Arm's-Length or No-Contract Situations

The benchmarks applicable to value coal in non-arm's-length or no-sale situations have proven difficult to use in practice. In addition, the first benchmark does not allow the use of comparable arm's-length sales by the lessee or its affiliates, exacerbating the challenging process of obtaining and

comparing relevant arm's-length sales contracts to value non-arm's-length sales. Furthermore, disputes arise over which sales are comparable, particularly because of the inherent ambiguity in applying the comparability factors.

The ONRR is soliciting comments on how to simplify and improve the valuation of coal disposed of in non-arm's-length transactions and no-sale situations. We seek input on the following questions:

- Should the current non-arm's-length benchmarks and their current sequential priority be retained? If not, what other methodologies might ONRR use to determine the royalty value of coal not sold at arm's length?
- Should the factors for determining the comparability of arm's-length contracts to non-arm's-length contracts, at 30 CFR 1206.257 (c)(2)(i), be amended, clarified, or removed?
- Should the royalty value of coal initially sold under non-arm's-length conditions be based on the gross proceeds received from the first arm's-length sale of that coal in situations where there is a subsequent arm's-length sale? (A variant of this approach would be to change the definition of the term "lessee" to include the lessee and its affiliates, partners, marketing agents, and trade and export associations, and establish royalty value based on the first sale to a buyer who is not included in the definition of "lessee.")
- Should the royalty value of coal sold under non-arm's-length conditions be based on a published index price? If so, which index and why?
- Should the royalty value be determined by calculating the cost to produce the coal plus a return on capital investment, if the particular coal is never sold at arm's length, or if sold by a coal cooperative of which the lessee is a member? If so, how should the return on capital investment be calculated?
- Are there any other appropriate methods for determining the royalty value of coal consumed without sale or without an arm's-length sale?

#### C. Transportation and Washing Allowances

The ONRR is exploring potential proposed changes to washing and transportation allowances that would streamline industry reporting and ONRR auditing processes. In particular, calculating actual transportation or washing costs under non-arm's-length transportation or washing arrangements can place a significant accounting burden on lessees and make the audit process lengthy and complex. We seek input on the following questions:

• Can the process of determining appropriate transportation and washing deductions or allowances be simplified? If so, how?

• Should ONRR allow bundled charges for coal transportation or washing?

• Should ONRR set standard cents per ton allowance amounts for washing and transportation in lieu of calculating actual costs? If so, how should such fixed allowances be determined; and when, and under what circumstances, should they be changed?

• Is coal washing an operation necessary to put coal into marketable condition for which no allowance should be permitted?

• Should transportation allowances be based on yearly averages from one region to another?

• Should the coal transportation and washing allowances be limited to a maximum percentage in a manner similar to gas transportation and processing allowances? Current coal valuation regulations provide that under no circumstances will the authorized washing allowance and transportation allowance reduce the value for royalty purposes to zero (30 CFR 1206.261(b) and 1206.460(b)). Gas transportation allowances may not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product, without prior written approval from ONRR (30 CFR 1206.156(c) and 1206.177(c)). The gas processing allowance deduction on the basis of an individual product may not exceed 66⅔ percent of the value of each gas plant product, reduced first for any transportation allowances related to post-processing transportation (30 CFR 1206.158(c)(2) and 1206.179(c)). If coal washing and transportation allowances should be limited to a maximum percentage of the initial value, what would be an appropriate percentage?

#### D. Coal Cooperatives

Coal cooperatives are a small but growing part of the coal industry. A coal cooperative is owned by its member power companies, and either mines coal itself or through a subsidiary. A cooperative provides its members with a secure source of coal at below-market prices that generally exclude a profit component. Current valuation regulations are not well suited to determining the royalty value of coal sold by cooperatives. We seek input on the following questions:

• Should the royalty value of coal sold by these cooperatives be determined based on a different method than is used for coal not sold by or through cooperatives due to the unique

aspects of these cooperatives? If so, what method(s) would you propose?

• Please comment on the use of production cost and return on investment as a possible valuation method.

#### E. Other Issues

The existing ONRR regulations contain only general provisions that address in situ or surface gasification or liquefaction (30 CFR 1206.264 and 1206.463). Under these provisions, a lessee must propose a value, and ONRR will issue a value determination. We seek input on the following questions:

• Are there general valuation methods that would be appropriate for most or all in situ or surface gasification or liquefaction operations? If so, please describe them.

• What other new production methods is industry developing that are likely to be economically viable and used in the near- to medium-term future?

• Are there any new marketing methods for coal of which ONRR should be aware?

In the interest of possible simplification, ONRR is interested in receiving comments regarding the continued separation of Federal and Indian coal valuation regulations. We seek input on the following questions:

• Should the Federal and Indian regulations be combined?

• Should the Indian coal valuation regulations be modified to eliminate the approval and form-filing requirements for washing and transportation allowances in the current regulations at 30 CFR 1206.458(a) and 1206.461(a)?

The ONRR is also interested in receiving comments on any other alternative coal valuation methodologies. If you propose a methodology different from those discussed above, please use our example criteria and explain why you believe your methodology is the best alternative. In addition, ONRR requests input on how the various methodologies would affect industry business practices, bookkeeping, etc.

Dated: May 23, 2011.

**Rhea Suh,**

*Assistant Secretary for Policy, Management and Budget.*

[FR Doc. 2011-13284 Filed 5-26-11; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[USCG-2011-0247]

RIN 1625-AA08

#### Special Local Regulation; Kelley's Island Swim, Lake Erie; Kelley's Island, Lakeside, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing a permanent Special Local Regulation on Lake Erie, Lakeside, Ohio. This regulation is intended to restrict vessels from portions of Lake Erie during the annual Kelley's Island Swim, which takes place in the second half of July. This special local regulated area is necessary to protect swimmers from vessel traffic.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 16, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2011-0247 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail BM1 Tracy Girard, Response Department, MSU Toledo, Coast Guard; telephone (419) 418-6036, e-mail [Tracy.M.Girard@uscg.mil](mailto:Tracy.M.Girard@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**