

The Secretary of the Interior (Secretary) is responsible for the collection of royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation and allowance determination process is essential to assure that the public and/or the Indians receive payment on the proper value of the minerals being removed.

MMS performs the royalty management functions for the Secretary. When a company or an individual enters into a contract (a lease) to explore, develop, produce, and dispose of oil from Indian lands, that company or individual agrees to pay the United States or Indian tribe or allottee a share (royalty) of the value received from production from the leased lands. Royalty rates are specified in the lease agreement. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is first necessary to establish the proper value of the oil that is being sold or otherwise disposed of in some other manner, as well as the proper costs associated with allowable deductions.

In some circumstances, lessees are authorized to deduct from royalty payments the reasonable actual cost of transporting the royalty portion of the oil from the lease to a delivery point remote from the lease. Transportation allowances are a part of the product valuation process which MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

Before any deduction may be taken, the lessee must submit page one of the Oil Transportation Allowance Report, Form MMS-4110, declaring the amount of reasonable actual transportation costs to be deducted from royalty. We estimate that 3 respondents will each submit an average of 7 allowance data lines for a total of 21 data lines annually. We estimate that each data line will require 1/4 hour to prepare, a total of 5.25 burden hours. Authorization to deduct a transportation allowance continues for 12 months, or until the contract is changed or terminated. At that time, the lessee must resubmit page one of Form MMS-4110. We estimate that recordkeeping for these transportation allowances will require 1/2 hour per respondent annually.

Dated: November 20, 1997.

**Joan Killgore,**

*Acting Associate Director for Royalty Management.*

[FR Doc. 97-31081 Filed 11-25-97; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service, Interior

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service, DOI.

**ACTION:** Notice of information collection solicitation.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Coal Transportation and Washing Allowance (OMB Control Number 1010-0074); this information collection pertains to Indian leases only.

**FORMS:** MMS-4292, Coal Washing Allowance Report and MMS-4293, Coal Transportation Allowance Report.

**DATES:** Written comments should be received on or before January 26, 1998.

**ADDRESSES:** Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e-Mail address is David\_Guzy@mms.gov.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Jones, Rules and Publications Staff, phone (303) 231-3046, FAX (303) 231-3385, e-Mail Dennis\_C\_Jones@mms.gov.

**SUPPLEMENTARY INFORMATION:** In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information and are inviting your comments. In this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

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royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation process is essential to assure that the public and/or the Indians receive payment on the full value of the minerals being removed.

MMS performs these royalty management functions for the Secretary. When a company or an individual enters into a contract (a lease) to develop, mine, and dispose of coal deposits from Indian lands, that company or individual (the lessee) agrees to pay the United States, Indian tribe, or allottee (the lessor) a share (royalty) of the gross proceeds received from the sale of production from leased lands. Royalty rates are specified in the lease agreement. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is necessary to establish the value of the coal being sold or otherwise disposed of in some other manner, as well as the proper costs associated with allowable deductions.

In some circumstances, lessees are authorized to deduct certain costs in the calculation of royalties due. An allowance may be granted from royalties to compensate lessees for the reasonable actual cost of washing the royalty portion of coal. Also, when the sales point is not in the immediate vicinity of a lease or mine area, an allowance may be granted to compensate lessees for the reasonable actual cost of transporting the royalty portion of coal to a sales point not on the lease or mine area.

Before any deductions are taken, the lessee with an arm's-length contract must submit page one of the Coal Washing Allowance Report, Form MMS-4292, or the Coal Transportation Allowance Report, Form MMS-4293. The allowances will be based on reasonable actual costs reported by the lessees and are subject to later audit. We estimate that one lessee will submit two reports annually and that each submission will require 1/2 hour to prepare, a total of 1 burden hour.

Lessees with a non-arm's-length contract must also submit Form MMS-4292 or Form MMS-4293. All applicable pages of the allowance application forms should be submitted. The allowances will be based on reasonable actual costs reported by the lessees and are subject to later audit. We do not anticipate any lessee with a non-arm's-length contract submitting allowance reports.

In those instances when Indian royalty coal is washed, transported, or sold under non-arm's-length conditions, it is necessary for MMS to obtain other data, and in some cases, appropriate sales contracts, to accurately determine if the value of coal and the gross proceeds for royalty calculation purposes have been correctly computed by the lessee. Coal sales contracts for Indian lands are required to be submitted only upon request by MMS. We estimate that four lessees may be requested to submit sales contracts and that each submission will take 3 hours to prepare, a total of 12 burden hours.

Authorization to deduct coal transportation and washing allowances continues for 12 months, or until the contract is changed or terminated. We estimate that recordkeeping for these allowances will require 1 hour per respondent annually (5 respondents  $\times$  1 hour = 5 burden hours). Therefore, the total annual burden hour estimate for this information collection is 18 burden hours (1+12+5=18).

Dated: November 20, 1997.

**Joan Killgore,**

*Acting Associate Director for Royalty Management.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Request for Determination of Valid Existing Rights Within the Wayne National Forest

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of decision.

**SUMMARY:** This notice announces the decision of the Office of Surface Mining Reclamation and Enforcement (OSM) on a request by Edward and Madeiline Blaire and Buckingham Coal Company, Inc. (Buckingham) for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM has determined that the requesters do possess VER to mine coal by surface methods on 25.2 acres of federal lands within the Wayne National Forest in Perry County, Ohio. This decision is based on the "takings standard," which requires OSM to evaluate whether a determination that the requester does not have VER would result in a compensable taking of a property interest under the Fifth Amendment to the U.S. Constitution.

**FOR FURTHER INFORMATION CONTACT:** Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937-2867. E-mail address: pmichael@osmre.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on VER Requirements for National Forest Lands

Section 522(e) of SMCRA (30 U.S.C. 1272(e)) prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977, the date of enactment of SMCRA. Section 522(e)(2) in relevant part, applies the prohibition to federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that (1) there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and (2) the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act and 30 CFR 740.11, the state definition of VER applies to all federal lands in states with regulatory programs approved under section 503 of SMCRA. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954). However, to be consistent with a previous federal court decision concerning OSM's March 13, 1979 definition of VER, the preamble included the caveat that, in states with an all-permits standard for VER, OSM would apply the standard as if it contained a good-faith component. In other words, if the state program requires that a person obtain all necessary permits prior to August 3, 1977, to qualify for VER, OSM will apply the standard as if it recognizes that a person also has VER in situations where that person has made a good faith effort to obtain all necessary permits by that date.

The approved Ohio program relies primarily upon the all-permits standard. Ohio Revised Code 1501:13-3-02(A)(1)(a). However, the United States District Court for the Southern District of Ohio has prohibited OSM from using the state program definition or the

policy set forth in the November 20, 1986 suspension notice. *Belville Mining Co. v. Lujan*, No. C-1-89-790 (S.D. Ohio July 22, 1991), *modified*, Sept. 21, 1992. In separate litigation, the same court applied a takings standard to a VER determination. *Sunday Creek Coal Co. v. Hodel*, No. C12-88-0416 (S.D. Ohio 1988).

In the *Belville* litigation, OSM made a commitment to the court to apply a takings standard in determining whether a person possesses VER to conduct surface coal mining operations on federal lands within the court's jurisdiction, including the Wayne National Forest, until a new federal rule defining VER is in place. Therefore, in the Southern District of Ohio, under the takings standard, a person has VER if, as of the date of the lands come under the protection of section 522(e) of SMCRA, application of the prohibitions of section 522(e) would result in a compensable taking of property under the Fifth Amendment to the U.S. Constitution.

##### II. Request for VER Determination

On August 14, 1995, James F. Graham of Buckingham requested that OSM determine whether the company has VER to remove the No. 6 coal seam, using block cut, contour, and area mining methods, from 25.2 acres of federal lands within the authorized boundaries of the Wayne National Forest in Perry County, Ohio. Buckingham previously submitted an application for a permit to conduct surface mining and reclamation operations on this parcel and an adjoining 10.7 acres of land in private ownership to the Ohio Department of Natural Resources (ODNR), Division of Reclamation on March 8, 1995. Of the 35.9 acres in the permit application, Buckingham proposes to mine a total of 12.6 acres of coal. The federal government owns the surface overlying 9.8 of these acres.

The lands included in the request lie along the eastern edge of a 134-acre parcel for which the United States of America purchased the surface rights from Daniel C. Jenkins, Jr. and other interested parties on April 24, 1967, and the Blaires on May 1, 1967. The U.S. Department of Agriculture, Forest Service (USFS) currently manages the land as part of the Wayne National Forest. The Blaires own the mineral estate and Mr. Graham is the lessee of all coal within that estate.

The property extends from north to south along an ephemeral tributary of Pine Run and is about 1.8 miles northeast of the city of Shawnee, Ohio. Its southern limit is adjacent to County