STATE OF NEW MEXICO
Taxation and Revenue Department
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November 5, 1997

Mr. David S. Guzy, Chief
Rules and Publications Staff
Royalty Management Program
Minerals Management Service
P.O. Box 25165 - MS 3101
Denver, Colorado 80225

Dear Mr. Guzy:

The New Mexico Taxation and Revenue Department (TRD) submits the following request and comments as it relates to the Federal Register Notice dated September 22, 1997.

The Mew Mexico Taxation and Revenue Department fully participated in the series of workshops which MMS held in October. While the meetings were beneficial as an opportunity to have open discussions on issues and concerns, and TRD made significant concessions in the area of tendering programs, downstream added value costs, and multiple exchange requirements, we continue to support the MMS propposal as it relates to requiring a spot-market price and netback approach when a royalty payor cannot recognize a gross proceeds price or they wish not to trace their federal royalty production to the point where an arm's-length sales transaction occurs.

With this letter, and the effort that was made by the Department in the October meetings to define our position, we are requesting that those comments and positions taken be made a part of this letter.

For ten years now, the current regulations have been in place in a market arena that has significantly changed. Between the years 1982 and 1988, the use of posted prices may have been an indicator of market value, but significant changes began to occur in 1991/1992 where it can be shown that posted prices no longer represented the overall price received but only represented the minimum to begin value negotiations. Current MMS efforts, even though significantly late, fully recognize that gross proceeds, when negotiated under an arm's-length contractual arrangement, should recognize market value for those payors. The main philosophical issue lies with royalty payors who are federal producers and manage such federal production for their refining needs. No "arm's-length" sales arrangements exist, and the difficulties of defining market value are not suppported by the current benchmark structure.

Industry, in their comments, continue to recommend a process whereby comparables are used. This comparability recommendation is no different from what the current benchmarks require, and we cannot support the concept that market value is driven by recognizing and comparing their arms'-length transactions and price to the price recognized in their non-arm's-length arrangement, within a field or area. The Department cannot support the process of comparing values/prices to independent third-party transactions, because industry continually states that the information is confidential and the burden of proof is moved to MMS through historic review, and no certainty exists for a royalty payor at time of payment.

In concluding, the Department requests that MMS move forward in promulgating a rule that is comparable to what has been identified. We recognize that "market value" is a term with many definitions, but MMS is the trustee that is required to ensure that the regulations require payment of federal royalties at a value that is "representable" of market value. Spot prices and NYMEX prices are developed around third-party transaction values, and these currently are the best indicator to use as a starting point in establishing a market value price.

Sincerely,

John Chavez, Secretary
New Mexico Taxation & Revenue Department