



October 11, 2013

Armand Southall  
Regulatory Specialist  
Office of Natural Resources Revenue  
P.O. Box 25165, MS 61030A  
Denver, CO 80225-0165

Re: Proposed Rule on Valuation of Federal Coal for Advance Royalty Purposes and Information Collection Applicable to All Solid Minerals Leases (78 Fed. Reg. 49062, August 12, 2013)

Dear Mr. Southall,

The Utah Mining Association (UMA) appreciates the opportunity to provide comments on the above referenced Office of Natural Resources Revenue (ONRR) proposed regulations to implement the provisions of the Energy Policy Act of 2005 governing the payment of advance royalty on coal resources produced from Federal leases.

UMA is a 98 year old, 110 member, non-profit, non-partisan trade association representing the interests of the mining industry in Utah. UMA members are actively involved in exploration and mining operations on public and private lands throughout the state. Our diverse membership includes every facet of the mining industry, including geology, exploration, mining, engineering, equipment manufacturing, legal and technical services, and sales of equipment and supplies. Several UMA members own Federal coal leases.

UMA supports the comments of the National Mining Association (NMA), incorporated herein by reference, and highlights the following aspects of the proposed rule.

### **New Information Collection Requirements**

ONRR is proposing a new form, "Solid Minerals Sales Summary" (Form ONRR-4440) to collect information from operators in order to determine a company's compliance with applicable laws, rules, and regulations. In addition, ONRR would use this proposed form to identify spot market sales of comparable coal from the same region and to determine an average price for Federal coal advance royalty purposes, despite the fact that existing contract data already provided to ONRR would provide such information.

As Form ONRR-4440 is implemented, UMA urges ONRR to reduce the burdens associated with submitting the additional information. UMA suggests the continued use of Excel, as it will allow companies to link the current internal spreadsheets being submitted, after adjusting for the new required data to be reported, into the standardized format report that would be submitted under the new form. Additionally, the ONRR

proposal does not indicate if the electronic reporting phase will allow for an upload of an Excel spreadsheet in a standardized format into the electronic form, or if the information will need to be input directly for each customer/contract on a monthly basis. UMA urges ONRR to ensure that the electronic reporting system continue the availability of uploading the required data from a standardized Excel formatted report to significantly reduce the amount of time to report the required information each month compared to a requirement to input the information directly into the Web-based format.

ONRR maintains that the revised Form ONRR-4440 data is necessary to ensure that ONRR has up-to-date spot market data as needed key to implement ONRR's and BLM's proposed coal advance royalty rules. Furthermore, ONRR asserts the submission of Form ONRR-4440 during these situations would enable the agency to monitor lessees' sales contract performance and continuity as needed to enhance ONRR's royalty compliance efforts.

UMA is concerned that submission of the revised Form ONRR-4440 in these circumstances will create significant confusion. For example, requiring the prior month activity to be reported as a revision to a previously submitted Form ONRR-4440 creates a difference between the reported information for a period compared to the actual invoiced activity recorded for that period per the lessees' books and records. As a result, there will be significant confusion during future audits when auditors request invoices to compare against the gross proceeds reported for that month.

In addition, to the extent ONRR moves forward with a final rule and collects any new information, UMA believes this information should not be subject to public disclosure pursuant to the Freedom of Information Act (FOIA). Not only is this information confidential business information, it would be subject to misinterpretation by those unfamiliar with the terms and processes.

### **Calculation of Advance Royalty by ONRR**

ONRR's proposed § 1218.602 sets forth a new method of computing advance royalty payments. This proposed provision states that ONRR will compute the value of coal advance royalties due for a lease or logical mining unit (LMU) by multiplying the commercial quantities in tons calculated under the BLM proposed rule by the value that ONRR calculates under § 1218.602(a) and by the royalty rate that BLM prescribes under its proposed 43 C.F.R. § 3483.4(d).

In the proposal, ONRR specifically requests comments on whether to define the 'applicable continued operation year' (COY) referenced in §1218.602 in the manner proposed, or in a manner consistent with previous practice. UMA believes ONRR should define COY as proposed since that approach is consistent with the language of the Energy Policy Act of 2005.

As part of the agency comments in the proposed rule, ONRR relates concerns that the proposed approach would result in time loss of the value of revenue since the previous practice was to determine value using prices of coal produced and sold during the

immediately preceding production royalty payment period. ONRR cannot use this rationale as the basis to ignore the Energy Policy Act statutory language that the advance royalty is due at the end of the continuous operating year instead at the beginning, as was the past practice. Furthermore, ONRR lament about the time loss of the value of revenue ignores the fact that the spot market price for coal is in constant flux and change and in fact the market price in some instances may be greater at the end of the continuous operating year than at the beginning, thus resulting in more revenue to the state governments and the Federal government.

Finally, as relates to calculation of advance royalty, UMA notes that currently a significant lag exists between when a reporter applies to BLM to pay advanced royalty and the time ONRR provides the calculated amount that a reporter owes for advance royalty. Any changes to ONRR's calculation of advance royalty should ensure that ONRR is able to supply the amount of advance royalty in a timely manner.

### **Definition of Comparable Coal, Region, and Spot Market**

ONRR proposes a number of definitions to assist the agency in determining weighted average spot prices needed to calculate advance royalty. ONRR specifically requests comments on the proposed definition of comparable coal as coal that is "sold in a similar market and is similar in chemical and physical characteristics to the coal produced at the lease or mine for which payment of advance royalties is required in lieu of continued operation."

This definition fails to provide any clarity as to what constitutes a "similar market." The proposal's discussion of "similar market" appears to only distinguish markets as i) steam/stoker; ii) utility/industrial; and iii) captive/open market. The term similar market should be defined or expanded to include "in the same market area" with "similar transportation issues."

The proposed definition for "region" only further confuses the issue of what constitutes a similar market since region is merely defined to be consistent with BLM identified regions. If ONRR adopts the BLM regions, it will be grouping mines for advance royalty purposes in very large specific geographic regions where mines within those regions may serve dissimilar end markets where no comparison would be readily available.

UMA believes adopting this definition is contrary to the Interior Board of Land Appeals decision in *BTU Empire Corporation*, IBLA 2006-21 decided August 28, 2007. In that decision, IBLA refused to uphold the MMS (ONRR's predecessor) broadly defined region in determining advance royalty when the lessee identifies a more appropriate comparison mine(s).

In accordance with *BTU Empire Corporation*, UMA suggests that ONRR further refine the definition of "region" to mean, "a geographic region where mines operate using similar methods in the same coal seam and employ similar transportation methods to reach market."

ONRR proposes to define *spot market* to mean "a market in which sales transactions occur where a seller agrees to sell to a buyer a specified amount of coal at a specified price over a fixed period usually not exceeding a year. Such transactions do not normally require a cancellation notice to terminate, do not contain an obligation, nor do they imply


intent to continue in subsequent periods.” ONRR requests comments on this definition, particularly whether to include in the definition sales agreements of approximately 1-year duration in which an initial agreement continues upon renegotiation of the sales price. UMA believes the spot market definition should not include any contract in which the initial agreement continues upon renegotiation of the sales price.

Additionally, ONRR requests comments on whether to narrow the definition of spot market price to include only prices in arm’s-length spot market contracts. Based on the “comparable coal” definition, UMA does not believe the spot market price would need to include the term “arm’s-length.”

### **Conclusion**

Thank you for the opportunity to submit these comments. UMA emphasizes the point made in comments of the National Mining Association that BLM and ONRR should confer with the Royalty Policy Committee (RPC) on the advisability of the proposed rules prior to moving forward with finalizing any new regulations. The RPC was specifically established to provide expert advice to Interior on managing federal leases and revenues, and should be allowed to fulfill this duty with respect to the proposed rule.

Sincerely,



Mark D. Compton  
President