Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. N-91-3359; FR-2753-N-02]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Housing Counseling Program: Announcement of Toll-Free Telephone Number

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the Department's toll-free telephone number by which the public may obtain a list of HUD-approved housing counseling agencies in their area.

FOR FURTHER INFORMATION CONTACT: Joseph C. Bates, Director, Single Family Servicing Division, room 9178, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone: (202) 708-1672. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 15, 1991 (56 FR 58158), the Department published in the **Federal Register** a proposed rule that would codify the procedures and requirements governing the Department's housing counseling program. (To date the housing counseling program has been administered under HUD Housing Counseling Handbook No. 7610.1, Rev. September 1990.) In the preamble to the proposed rule, the Department advised that section 577 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) authorized the Department, to the extent of amounts approved in appropriations acts, to enter into an agreement with a private entity which would operate a toll-free number by which a person could obtain a list of the HUD-approved agencies that serve the area in which the person resides. The Department stated that once the toll-free number is operational, it would be announced by separate notice in the **Federal Register**.

The purpose of this notice is to announce this toll-free number. The number is: 800-733-3238.

Dated: December 5, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-29630 Filed 12-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB29

Amendment of Valuation Benchmarks in Gas Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations governing the valuation of gas produced from Federal and Indian leases. The proposed amendments would modify the first benchmark for valuing unprocessed gas, residue gas, and gas plant products not sold pursuant to an arm's-length contract. The MMS is also proposing to add an additional benchmark to the sections on processed and unprocessed gas. These changes are proposed to make the benchmarks easier for royalty payors to apply in valuing gas production, and to provide more certainty to the process.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Written comments, suggestions, or objections regarding the proposed amendments should be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Scott Ellis and John L. Price of the Royalty Valuation and Standards Division, and Donald T. Sant, Deputy Associate Director for Valuation and Adult, Royalty Management Program, MMS.

I. Background

On January 15, 1988, MMS published new gas valuation regulations in the **Federal Register** (53 FR 1230) that became effective March 1, 1988. Before adopting the final regulations, MMS received comments on a Notice of Proposed Rulemaking published in the **Federal Register** on February 13, 1987 (52 FR 4732), a First Further Notice of Proposed Rulemaking published on August 17, 1987 (52 FR 30776), and a Second Further Notice of Proposed Rulemaking published on October 23, 1987 (52 FR 39792). In addition, public hearings were held on the proposed gas valuation regulations. Comments that were received in response to the **Federal Register** Notices and at the public hearings were considered in the adopted regulations.

The final valuation regulations establish royalty values based on market values determined by the supply/demand interaction through arm's-length transactions. To ensure that the proper royalty value is established in those situations where gas production is not sold pursuant to arm's-length transactions, a benchmark system was developed. The determination of value under the benchmark system is based primarily upon values established under comparable arm's-length transactions occurring in the field or area in question. In the absence of comparable arm's-length transactions, the best available gas sales data relevant to the situation or a net-back procedure is used to establish value. See paragraph (c) of 30 CFR 206.152 and 206.153.

The MMS received numerous comments on whether or not to adopt a benchmark system to value gas production not sold pursuant to arm's-length contracts and what criteria would be used in each benchmark to establish gas value. Industry generally supported the concept of comparing the values under non-arm's-length transactions with values under comparable arm's-length contracts. Industry also supported additional benchmarks that were based upon market-oriented

factors. The additional benchmarks were said to be necessary in instances where comparable arm's-length transactions did not exist. State and Indian commenters generally supported the benchmark system for determining gas value in other-than-arm's-length situations, but preferred to establish value based on the highest price paid in the field.

One State commenter did not believe that the benchmark system was fair to the royalty owner: "It would be unreliable because the standards are vague, subjective, and subject to abuse * * *." One industry commenter partially agreed with this assessment, relating that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Another industry commenter during the rulemaking process suggested that the wording of the benchmark criteria should be amended to avoid ambiguity in the application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the * * * arm's-length contracts of other lessees in the field." The commenter further stated that he understood the intent of the proposed regulations was that the proceeds under the referenced arm's-length contract would be used to set royalties, but the regulation did not expressly so state. The commenter observed: "* * * as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent,' then the next criterion in the hierarchy would apply. This ambiguity should be removed."

In the final regulations, MMS adopted as the first benchmark (paragraph (c)(1) of 30 CFR 206.152 and 206.153) the lessee's gross proceeds received under its non-arm's-length transaction if they are equivalent to the gross proceeds received under comparable arm's-length contracts for like-quality production in the same field or area. The criteria to be considered in defining comparable contracts are also outlined in the above-referenced sections. However, since the adoption of the revised regulations, numerous questions have been raised as to the interpretation of the first benchmark. These questions have generally addressed two issues:

(a) How does the lessee, or MMS, determine the acceptability of the lessee's gross proceeds under its non-arm's-length contract when there are numerous comparable arm's-length contracts with a range of proceeds passing between the parties?

(b) How does the lessee, or MMS, determine the acceptability of the lessee's gross proceeds under its non-arm's-length contract when there are no comparable arm's-length contracts for the sale of like-quality production between parties not affiliated with the lessee?

The Department of the Interior also was sued by a group of affiliated producers over, among other things, the final regulations' treatment of valuation under non-arm's-length contracts. *ANR Production Co., et al.* v. *Hodel*, Civ. No. CV 88-0045 (W.D. La., filed Jan. 14, 1988).

Lessees have discovered that many arm's-length contracts are comparable to their non-arm's-length contracts from the standpoint of time of execution, market served, duration, and volume and quality of gas. However, a range of prices commonly exists for the comparable arm's-length contracts. Lessees are uncertain if MMS will view their gross proceeds under the non-arm's-length contract as acceptable, for royalty valuation purposes, if they are greater than or equal to the gross proceeds paid under at least one comparable arm's-length contract. To illustrate, assume there are 10 arm's-length contracts in the field comparable to the lessee's non-arm's-length contract except that each of the 10 contracts has a different price. Assume further that the non-arm's length contract gross proceeds are equal to the proceeds under the second to the lowest arm's-length contract. The lessees are uncertain whether MMS will accept the non-arm's-length gross proceeds as value.

Since issuance of the regulations, numerous questions have been raised as to how MMS will enforce the first benchmark. The questions have identified the need to further clarify the intentions of MMS in this regard. Therefore, MMS is proposing to modify the benchmark system by clarifying the first benchmark and establishing four benchmarks where there are now only three.

II. Proposed Amendments

The MMS is proposing to amend paragraph (c)(1) of 30 CFR 206.152 and 206.153 and to add an additional benchmark to both sections.

In recognition of the realities of the gas marketplace, it is being proposed that the gross proceeds accruing to a lessee under its non-arm's-length contract would be accepted as value if they are not less than the gross proceeds derived from or paid under the lowest priced available comparable arm's-length contract between parties both of whom are not affiliated with the lessee for similarly situated production.

Available contracts would mean contracts in the possession of the lessee or MMS. This would not require knowledge of all contracts in the field, or, for processed gas, for a particular plant, but it would require MMS to index and catalogue all contracts in its possession. Limiting the range to arm's-length contracts where both parties are not affiliated with the lessee protects the lessor's interest if a lessee attempts to have the gross proceeds under its non-arm's-length contracts accepted on the basis of an arm's-length contract involving the lessee (or its affiliate) which was entered into for the purpose of creating a low-priced, comparable arm's-length contract. Therefore, under this first benchmark, the gross proceeds accruing to a lessee under its non-arm's-length contract would not be accepted as value if they are less than the gross proceeds derived from or paid under all available comparable arm's-length contracts between parties, both of whom are not affiliated with the lessee, for like-quality production.

The MMS also recognizes, however, that there may be some instances where there are no comparable arm's-length contracts in the field or area, or plant, between parties not affiliated with the lessee. For example, in a field there may be only one pipeline purchaser who happens to be affiliated with 1 of 10 lessees. Even though there would be many arm's-length contracts between that pipeline purchaser and the other nine lessees, the affiliated lessee could not use the proposed first benchmark. Therefore, it is being proposed that a new, second benchmark be added. This benchmark would provide that the lessee's gross proceeds under its non-arm's length contract will determine the value of the production if they are not less than the gross proceeds derived from any available comparable arm's length contract between sellers who are not affiliated with the lessee and purchasers who are affiliated with the lessee for sales or other dispositions of like-quality production in the same field (or plant) or, if necessary to obtain a reasonable sample, from the same area (or nearby plants). The MMS believes that the lessors' interests would be protected in this situation because the sellers under the comparable contracts must be unaffiliated with the lessee. Lessees would be able to use this second benchmark only when the first benchmark cannot be applied; i.e., when there are no comparable contracts

between persons unaffiliated with the lessee. As in the first benchmark being proposed, if the lessee cannot demonstrate that its gross proceeds are not less than the gross proceeds derived from comparable arm's-length contracts identified under this second benchmark, its gross proceeds would not be acceptable as value under this second benchmark.

If neither the proposed first or second benchmark were applicable, then the gas production would be required to be valued under the third benchmark which is not being proposed for change.

The MMS believes that the proposed amendments will provide the lessee with a clarified regulation that reflects the realities of the marketplace. The proposed rule also is consistent with MMS's policy for implementing the first benchmark under the existing regulations. The proposed amendments are not expected to change royalty collections. The MMS specifically would like comments on whether the proposed regulatory language accomplishes the clarification as described in this preamble.

The proposed amendments do not change the requirement in 30 CFR 206.152(a)(3)(i) and 206.153(a)(3)(i) that for any Indian lease which provides that the Secretary of the Interior may consider the highest price paid or offered for a major portion of production in determining value, the value for royalty purposes will be the higher of the major portion value or the value determined under the benchmarks.

III. Requested Comments on Selected Issues

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the day specified in the **DATES** section of this preamble.

Finally, MMS is seeking comments on the proposed factors in evaluating the comparability of arm's-length contracts in paragraph (c)(1) of 30 CFR 206.152 and 206.153. The MMS specifically would like comments on whether these factors provide adequate information for evaluation and whether other factors for comparability should be used in the evaluation.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

This rule simplifies and clarifies existing regulations, with no change in the administrative requirements or burdens placed upon small business entities. Therefore, the Department has determined that this document is not a major rule under Exe :utive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

Because this rulemaking clarifies existing regulations, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 28, 1991.

David O'Neal,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5. U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (c) of § 206.152 under subpart D (Federal and Indian Gas) is revised to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contact (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest priced available arm's-length contract between persons not affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession of the lessee or Minerals Management Service (MMS). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Field or area, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) Where no comparable arm's-length contracts exist between persons not affiliated with the lessee, the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract between sellers not affiliated with the lessee and purchasers affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession of the lessee or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: field or area, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(3) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-

length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(4) A net-back method or any other reasonable method to determine value.

* * * * *

3. Paragraph (c) § 206.153 under subpart D is revised to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest prices available comparable arm's-length contract between persons not affiliated with the lessees (the "minimum value"). Available contracts are those contracts in the possession of the lessee or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Same plant or nearby plants, time of execution, duration, market or markets served, terms, quality of residue gas and gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas and gas plant products;

(2) Where no comparable arm's-length contracts exists at the plant or nearby plant between persons not affiliated with the lessee, the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest priced available comparable arm's-length contract between sellers not affiliated with the lessee and purchasers affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession or the lessee of MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: same plant or nearby plants, time of execution, duration, market or markets served, terms, quality of residue gas and gas plant products, volume, and such other factors as may be appropriated to reflect the value of the residue gas and gas plant products;

(3) A value determined by consideration of other information relevant in valuing like-quality gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources or price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(4) A net-back method or any other reasonable method to determine value.

* * * * *

[FR Doc. 91-29732 Filed 12-11-91; 8:45 am]
BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA11-3-5282; FRL-4040-2]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Bay Area Air Quality Management District, San Diego County Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (AQMD), San Diego County Air Pollution Control District (APCD), and South Coast AQMD, on November 1, 1989, March 14, 1989, and January 5, 1990, respectively. The California Air Resources Board submitted the revisions from the Bay Area and South Coast Districts to EPA on December 31, 1990, and submitted the revisions from the San Diego District to EPA on April 5, 1991. This notice addresses three revised rules to control emissions of volatile organic compounds (VOCs) from wastewater separators and related operations. EPA has evaluated each revised rule and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act Amendments of 1990 (CAAA) in order to strengthen the SIP. At the same time, EPA is proposing a limited disapproval of these rules because they contain deficiencies that were required to be corrected by section 182(a)(2)(A) and, as a result, do not meet the requirements of part D of the Act.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California & Arizona, Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123-1095.

South Coast Air Quality Management District, Planning & Rules, P.O. Box 4939, Diamond Bar, CA 91765-0939.

FOR FURTHER INFORMATION CONTACT: Thomas Huetteman, Northern California, Nevada & Hawaii, Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190, FTS: 484-1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act that included the Bay Area Air Quality Management District (AQMD), San Diego County Air Pollution Control District (APCD), and South Coast AQMD (43 FR 8964). 40 CFR 81.305. Because it was not possible for these Districts to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone in these Districts to December 31, 1987. Section 172(a)(2). The Bay Area AQMD, San