

1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3900, Denver, Colorado, 80225-0165, telephone number (303) 231-3899, fax number (303) 231-3194.

**SUPPLEMENTARY INFORMATION:** Through an informal study group, MMS has conducted discussions to receive input on the current gas market and identify the challenges facing royalty valuation of gas produced from Indian leases for royalty purposes. The discussions have gone well and needs for regulatory changes have been identified. The MMS now believes that using a negotiated rulemaking committee to make specific recommendations with respect to Indian gas valuation would help the agency in developing a rulemaking. The Department is, therefore, establishing the Indian Gas Valuation Negotiated Rulemaking Committee.

### Background

Since the publication of the March 1, 1988, gas valuation regulations many of MMS's constituents have expressed concern about the valuation basis for Indian gas royalties. Concern has focused upon the scope of the Secretary of the Interior's (Secretary) discretion to determine the values of lease substances for royalty purposes in a manner consistent with the Federal trust responsibility to Indian beneficiaries. Moreover, the implementation of specific valuation methodologies in paragraph 3(c) of standard Indian oil and gas leases, such as, dual accounting, and major portion analysis, has been problematic. Those difficulties include issues of comparability, certainty, and access to information. As part of Vice President Gore's National Performance Review (NPR), the Royalty Management Program recently initiated a Reinvention Laboratory Team to examine ways to streamline the royalty management process. One of the overall recommendations of that team was to improve the gas valuation process on Indian lands.

### Statutory Provisions

FOGRMA (30 U.S.C. 1701 *et seq.*), Indian Mineral Development Act of 1982 (25 U.S.C. 2101-2108; and 25 U.S.C. 2 and 9), 30 CFR Part 206 (1993), 25 CFR Part 225 (1994), and Indian oil and gas lease and agreement terms.

### The Committee and Its Process

To carry out the Secretary's trust responsibility to Indian mineral lessors, the MMS met during the winter and spring of 1994 with representatives of several tribes and allottee associations to receive input about the current gas market and identify regulatory changes needed to add certainty and simplicity to valuation, for royalty purposes, of gas produced from Indian leases. The purpose of the meetings was to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. An informal study group format was used to obtain and clarify varying viewpoints. The first work product of the study group was publication, on August 4, 1994, of an Advance Notice of Proposed Rulemaking soliciting comments on new methodologies being considered to establish value on production from Indian leases. The materials received to date during the input sessions are available for inspection and copying at the address referenced above for Mr. Donald T. Sant. Members of the study group currently include tribal and allottee representatives involving from time to time the Navajo Nation, the Jicarilla Apache Tribe, the Native American Rights Fund, the Shoshone and Arapaho Tribes of the Wind River Reservation, the Northern Ute Tribe, the Southern Ute Tribe, the Council of Energy Resource Tribes, the Bureau of Indian Affairs (BIA), and MMS. To get specific input from the oil and gas industry, the study group anticipates adding new members representing the interests of large, medium, and small operators. New members will include representatives from Conoco Inc.—a large integrated company with significant production from Indian lands, Meridian Oil Inc.—a large independent company producing gas from Indian lands, Mid-Continent Oil and Gas Association—a trade association with members from both the major and independent oil and gas industry, and a private sector attorney from Holmes, Roberts and Owens—with clients that produce gas from Indian lands in the Rocky Mountain area.

The MMS and the study group participants believe that the input

sessions have been mutually beneficial. As a result, MMS now believes it would be appropriate for the study group to transform itself and make specific regulatory recommendations for implementing a rulemaking regarding Indian gas valuation. The Department is therefore establishing the Indian Gas Valuation Negotiated Rulemaking Committee.

The recently enacted Negotiated Rulemaking Act of 1990 (Pub. L. 101-648) contemplates a "convening" process which involves identifying the potential parties and issues, publishing a notice of intent to form a committee, waiting 30 days for comments to be submitted responding to the notice, and only then proceeding with the establishment of the committee provided it meets the criteria of the Act. In this case, the study group process has served the same function as the convening—parties that would be significantly affected and the issues in controversy have been identified. The study group's discussions have also enabled the MMS to determine that the criteria for negotiated rules, as spelled out in the Negotiated Rulemaking Act, are met for this rule:

- The rule is needed, since royalty payors have considerable difficulty in complying with the current regulations at the time royalties are due, particularly in the current gas market.
- A limited number of identifiable interests will be significantly affected by the rule. Those parties are oil and gas companies who produce gas and pay royalties on Indian leases and Indian tribes and allottees who receive royalties from gas produced from Indian leases located on their lands.
- Representatives can be selected to adequately represent these interests, as reflected above.
- The interests are willing to negotiate in good faith to attempt to reach a consensus on a proposed rule.
- There is reasonable likelihood that the Committee will reach consensus on a proposed rule within a reasonable time. This determination has been made based on discussions of the study group, and hence is built on the developments to date.
- The use of the negotiation will not delay the development of the rule if time limits are placed on the negotiation. Indeed, its use will expedite it and the ultimate acceptance of the rule.

The Department is not proposing to issue a separate notice of intent to form a negotiated rulemaking committee for this rule. Given the evolution of this committee, the publication of such a notice would only slow down the