From: Huggins, Johnna [JHuggins@archcoal.com]
Sent: Thursday, July 05, 2001 11:18 AM
To: MRM.comments@mms.gov
Subject: Comments on Proposed Solid Mineral Reporting Requirements

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July 5, 2001

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and

Minerals Management Service
Minerals Revenue Manager
Regulations & FOI Team
P.O. Box 25165
MS 320B2
Denver, CO 80225-0165

Re: Comments on Proposed Solid Mineral Reporting Requirements

Dear Madam or Sir:

On June 5, 2001 the Minerals Management Service of the Department of the Interior proposed revisions to its solid mineral reporting regulations (66 Fed. Reg. 30121). Herein contained are the comments of Arch Coal, Inc.

Arch Coal holds federal coal leases and sells coal from those leases in the states of Wyoming, Colorado and Utah.

As an initial matter, we commend the Minerals Management Service in this proposal to replace the current 8 reporting forms with Form MMS-4430. Although some period of adjustment is always necessary when administrative changes as these are implemented, we believe that over time this step will simplify the reporting process.

However, Arch Coal has significant concerns regarding the proposed submission of sales summaries (§201.202) and sales contracts (§201.203). Our objections to the proposals contained in these subsections fall into four categories as described below:

1. These regulations would broaden a provision already contained in the existing regulatory program (§206.263), which requires federal coal lease producers to submit to MMS, upon request, various contracts for the sale of coal from ad valorem leases. The existing regulation is already troubling to us in that it places Arch Coal and other coal producers in harms way by requiring us to turn over, upon request, highly confidential, proprietary and highly valuable commercial information to the MMS. We

have absolutely no objection whatsoever to MMS coming to our offices, mines or facilities to review this material in the course of audits, whether they are regularly scheduled or specially announced. But we continue to have serious reservations regarding the potential public distribution (whether it would be inadvertent or otherwise) through the release of highly proprietary commercial information such as contracts, agreements and other such documents.

Unfortunately the proposed regulations would make a bad situation even worse by requiring lessees automatically to submit all ". . . sales contracts, agreements, contract amendments or other documents . . . " rather than submitting such information "upon request". The automatic submission of such materials will further raise the risk of compromising confidential, proprietary information, irrespective of whether or not a confidentiality provision is contained in the regulations (see comment 2 below).

Under the proposed rule Federal coal producers will be responsible for interpreting which documents and other supplemental information must be submitted, without specific guidance or direction. Note: the lease agreements with the Bureau of Land Management only require lessees to provide "information and documents that are reasonably necessary to verify lease compliance with the terms and conditions of the lease." This broad, vague and ambiguous regulatory requirement will unfairly subject producers to significant legal and financial risks for inadvertent failure to submit documents which MMS, upon later examination, concludes could or should have been submitted. We have understood that MMS is attempting to avoid imposing such broad interpretive risks on lessees.

2. The existing regulations (§206.263(d)) provide that trade secrets and commercial and financial information that is identified as privileged or confidential must be withheld from public inspection without the consent of the lessee. Unfortunately the proposed regulations would delete subsection 263 in its entirety. We have been advised informally that the elimination of the trade secrets provision is not the intention of the MMS to delete the confidentiality provision. We certainly hope that is the case. Nevertheless, we urge in the strongest terms possible that a provision at least as strong, if not stronger, than the existing subsection (d) be instated in the final rule to prevent wholesale distribution of confidential information.

3. Proposed section §210.203 is unacceptably vague in that it could be interpreted as requiring the routine submission of all ". . . sales contracts, agreements, contracts amendments or other documents that affect gross proceeds received . . ." every quarter, irrespective of whether such information has been previously submitted in any previous quarter. Regardless how MMS responds to our concerns as raised in comment 1 above, Arch Coal believes that the final regulations should be made expressly clear that information previously submitted need not be subsequently resubmitted on a quarterly basis to MMS. To do otherwise would create an inordinate administrative paperwork burden both for lessees as well as for the federal government.

4. Of specific concern is the requirement to submit ". . . other documents that affect gross proceeds received . . ." in subsection 203. This provision can create unacceptable risks to lessees by subjecting us to liabilities for the inadvertent failure to submit documents which conceivably could affect gross proceeds received but which we either inadvertently or through good faith interpretation failed to provide because we did not interpret the regulations as requiring such submission. Coal lessees should not be required on a continuing basis to interpret what information conceivably might be required by MMS and what may not.

As we have repeatedly pointed out in various public meetings and other forums in our discussions with MMS, the coal industry is prepared to work cooperatively with MMS to make available to MMS all necessary information. However, broad, vague language such as "other documents that affect gross proceeds received" is so broad as to establish a burdensome and administratively difficult precedent for lessees in that we could be required to continually engage in highly cumbersome legal and other internal reviews to determine what information should or conceivably might need to be submitted on a routine basis ever quarter. We believe this is totally contrary to the concepts of simplification, which are embodied in the proposed rules.

Respectfully submitted,

Terry O'Connor

TO/jh

bcc: Rick Schellinger
Steve McCurdy
Dave Peugh
Dave Finkenbinder

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