

Statement for the Record
U.S. Department of the Interior
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
June 9, 2022

H.R. 4799, Coal Royalty Fairness and Communities Investment Act of 2021

H.R. 4799, the Coal Royalty Fairness and Communities Investment Act of 2021, sets the coal royalty rate at no less than 12.5 percent of “assessment value,” but allows the Secretary of the Interior (Secretary) to set a lower royalty rate for coal recovered by underground mining operations. The bill defines “assessment value” as the gross proceeds for the sale of Federal coal to a separate unaffiliated organization (also known as an “arm’s-length contract”) from the lessee. The bill also requires the Secretary to develop and publish a quarterly coal price index based upon the average market price of Federal coal at “assessment value,” with the methodology for the calculation.

H.R. 4799 requires the Government Accountability Office (GAO) – in consultation with the Departments of the Interior, Transportation, and Energy – to review the Federal coal program every three years for 15 years. The bill also requires the Secretary to enter into an agreement with the National Academy of Sciences to conduct a study to determine the most equitable valuation method of coal produced on Federal lands. Finally, H.R. 4799 establishes the “Coal Area Economic Revitalization Fund,” and deposits up to \$75 million in coal revenues each year into that Fund, to be used for economic and workforce development assistance in communities that have been negatively impacted by changes in the coal economy.

Most of the uses of the Coal Area Economic Revitalization Fund are for programs outside of the Department’s jurisdiction, such as grant assistance to impacted communities for economic and workforce development programs; financial assistance for the design, construction, and operation of large-scale projects to capture and store carbon dioxide emissions from industrial sources; and technical assistance and educational outreach. These programs would be administered by Departments outside of the Department of the Interior and we defer to those agencies on their implementation.

Analysis

The Department shares the Sponsor’s interest in ensuring coal royalty payments consistently provide the taxpayer a fair return for natural resources and supports the goals of the legislation. However, the Department has some concerns about the practicality of implementing the methods proposed in the bill. Generally, the Department, through its Office of Natural Resources Revenue (ONRR), supports the use of “arm’s-length” prices to best determine value for royalty purposes. The bill would require that, in the absence of an arm’s-length contract, the sales value for royalty purposes would be set at a “price imputed by the Secretary.” In situations where sales are among affiliates, ONRR generally supports tracing the chain of sales to the first arm’s-length sale. In cases where no arm’s-length sale occurs, ONRR generally supports using comparable arm’s-length sales to value, for royalty purposes, a non-arm’s-length sale. In most cases, arm’s-length sales are the preferred and most accurate indicator of market value. The bill would shift the responsibility of valuing non-arm’s-length sales of coal, for royalty purposes, from lessees to the United States, rather than requiring lessees to report a value by employing available market information.

H.R. 4799 would also require the Secretary to publish a coal price index quarterly in the Federal Register. While private entities publish coal price indexes using sales data that is voluntarily submitted by coal producers, in most cases there are only a few producers of a specific quality of coal available to provide data used to calculate a coal index price. Western coal is characterized by various qualities unique to individual basins and sold by a limited number of sellers. Furthermore, because there are so few sellers in any given basin, it would be difficult to establish an index price while ensuring the proprietary nature of lessees' reporting. This limits any one coal index's usefulness as an accurate representation of the value of coal in general and makes an average index wholly inaccurate. As such, index prices are rarely, if ever, used by coal producers to establish an arm's-length contract price.

The Department appreciates the intent of Section 5 of the bill to provide additional transparency to the public regarding management decisions for the Federal coal program. In response to a GAO review (GAO-14-140), the Bureau of Land Management (BLM) has implemented independent reviews by the Department's Appraisal and Valuation Services Office, Division of Mineral Evaluation on the fair market value determinations of coal prior to lease sales. Further, on August 20, 2021, the BLM published a Notice of Intent in the *Federal Register* to conduct a review of the Federal coal leasing program. That Notice served to inform the public of the BLM's intent to review the Federal coal program and to solicit comments from the public on whether the bonus bids, rents, and royalties received under the Federal coal program are successfully securing a fair return to the American public for Federal coal, and, if not, what adjustments could be made to provide such compensation. The BLM received 1,220 unique comments, 145 (12 percent) of which were related to fair returns and royalty valuation.

Lastly, the Department is supportive of the establishment of efforts to ensure impacted coal communities benefit from Federal coal development. However, we note that in FY 2021 only \$33 million of the approximately \$360 million in coal revenues were disbursed to the United States Treasury's miscellaneous receipt account and thus would be available for this fund. With the potential decline in coal demand and the limited amount of coal revenues, the sponsors should be aware that the intended revenues to be allocated under the bill may not be available for that purpose in future years.

The Department looks forward to continuing to work with Congress and this Committee on potential reforms to the federal coal program.