



DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

[Docket No. ONRR–2012–0004; DS63644000 DR2000000.CH7000 178D0102R2]

RIN 1012–AA13

Postponement of Effectiveness of the Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform 2017 Valuation Rule

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notification; postponement of effectiveness.

SUMMARY: On July 1, 2016, the Office of Natural Resources Revenue (ONRR) published the Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Final Rule (2017 Valuation Rule or Rule) in the Federal Register. On December 29, 2016, three separate petitions challenging the 2017 Valuation Rule were filed in the United States District Court for the District of Wyoming. In light of the existence and potential consequences of the pending litigation, ONRR has concluded that justice requires it to postpone the effectiveness of the 2017 Valuation Rule pursuant to 5 U.S.C. 705 of the Administrative Procedure Act, pending judicial review.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: On July 1, 2016, ONRR published the 2017 Valuation Rule in the Federal Register. *See* 81 FR 43338. The 2017 Valuation Rule changes how lessees

value their production for royalty purposes and revises revenue-reporting requirements.

Although the 2017 Valuation Rule took effect on January 1, 2017, Federal and Indian Lessees are not required to report and pay royalties under the Rule until February 28, 2017. Under this notification, Lessees will not be required to report and pay royalties under the Rule as of that date.

On December 29, 2016, three separate petitions were filed in the U.S. District Court for the District of Wyoming.¹ The petitions allege that certain provisions of the 2017 Valuation Rule are arbitrary, capricious, and contrary to the law. On February 17, 2017, the petitioners sent the ONRR Director a letter requesting that ONRR postpone the implementation of the 2017 Valuation Rule. The petitioners claim that lessees affected by the Rule face significant hardship and uncertainty in the face of reporting under the rule for the first time on February 28, 2017. The petitioners also claim that the new reporting and payment requirements in the Rule are difficult, and in some cases impossible, to comply with by the royalty reporting deadline; a difficulty exacerbated by the fact that non-compliant lessees may be exposed to significant civil penalties.

Under Section 705 of the Administrative Procedure Act “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” 5 U.S.C. 705. In light of the pending litigation, and for the following reasons, ONRR has concluded that justice requires it to postpone the effectiveness of the 2017 Valuation Rule until the judicial challenges to the Rule are resolved.

¹ *Cloud Peak Energy, Inc. v. United States Dep’t of the Interior*, Case No. 16CV315-F (D. Wyo.); *American Petroleum Inst. V. United States Dep’t of the Interior*, Case No. 16CV316-F (D. Wyo.); *Tri-State Generation and transmission Ass’n, Inc., Basin Electric Power Cooperative, and Western Fuels-Wyoming, Inc., v. United States Dep’t of the Interior*, Case No. 16CV319-F (D. Wyo.)

First, the postponement will preserve the regulatory status quo while the litigation is pending and the Court decides whether to uphold the regulation. While ONRR believes the 2017 Valuation Rule was properly promulgated, the petitioners have raised serious questions concerning the validity of certain provisions of the Rule, including the expansion of the “default provision” and the use of the sales price of electricity for certain coal-royalty valuations. Given this legal uncertainty, maintaining the status quo is critical for a number of reasons. First, a postponement will avoid the substantial cost of retroactively correcting and verifying all revenue reports if the 2017 Valuation Rule is invalidated, in whole or in part, as a result of the pending litigation. Federal and Indian lessees affected by the 2017 Valuation Rule submit approximately 450,000 reporting lines every production month. If the Court invalidates the 2017 Valuation Rule, affected lessees would be forced to correct and resubmit reporting lines for each production month that the Rule is in effect. ONRR would be required to review and verify the same. Thus, postponing the 2017 Valuation Rule will avoid forcing both the regulated community and ONRR to perform the complicated, time-consuming, and costly task of correcting and verifying revenue reports and payments if the 2017 Valuation Rule is invalidated as a result of the pending litigation.²

In addition, the postponement will enhance the lessees’ ability to timely and accurately report and pay royalties because they will be using a well-known system that has been in place for the last 25 years. ONRR has received numerous legitimate questions from lessees on how to apply the 2017 Valuation Rule, some of which will require additional consideration and time before

² Some lessees have likely converted their accounting systems to report and pay royalties under the new rule. While these lessees will incur a cost to revert back to the pre-existing system, the cost of doing so now, before the first reporting period, will be much less than if the reversion is required later upon judicial order, and the lessee is required to correct its reporting for each month it reported under the Rule.

ONRR can definitively answer them; thus increasing the likelihood that lessees will initially report incorrectly and later need to adjust their reports. In addition, the Court may resolve some of these issues differently than ONRR, again increasing the likelihood that lessees will need to submit corrected reports. Given these judicial and administrative uncertainties, relying on the previous regulatory system while the litigation is pending will reduce uncertainty and enhance ONRR's ability to collect and verify natural resource revenues, which is in the best interest of all those who benefit from royalty payments, including States, Tribes, individual Indian lessors, and the general public.

The United States will suffer no significant harm from postponing the effectiveness of the 2017 Valuation Rule while the litigation is pending. As noted in the preamble to the final rule, the implementation of the Rule is not expected to have a significant impact on the economy. 81 FR 43338, 43368. Thus, postponing the effectiveness of the Rule will not cause any appreciable economic harm to the general public. In fact, the interests of all royalty beneficiaries will be enhanced by the regulatory certainty provided by the postponement, as discussed above. In contrast, the regulated community will suffer harm without the postponement, especially if the Rule is later invalidated by the Court. If the Rule is invalidated, the regulated community would not only incur the unreimbursable costs of reverting back to the old system, but would also incur the substantial costs of correcting its reports and royalty payments for each production month.

In sum, in light of the existence and consequences of the pending litigation, and given the potentially irreparable harm that could result if the 2017 Valuation Rule is immediately implemented, ONRR has determined that the public interest and justice requires postponing the effectiveness of the 2017 Valuation Rule until the litigation is resolved.

Accordingly, pursuant to Section 705 of the Administrative Procedure Act, 5 U.S.C. 705, ONRR has postponed the effectiveness of the Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Final Rule pending judicial review.

February 22, 2017

Date

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Office of Natural Resources Revenue

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