



[4335-30]

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

[Docket No. ONRR-2017-0002; DS63644000 DR2000000.CH7000

178D0102R2]

RIN 1012-AA21

Federal Oil and Gas and Federal and Indian Coal Valuation

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

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Office of Natural Resources Revenue (ONRR) requests comments and suggestions from affected parties and the interested public on whether revisions to the regulations governing the valuation, for royalty purposes, of oil and gas produced from Federal onshore and offshore leases and coal produced from Federal and Indian leases, are needed and, if so, what specific revisions should be considered. On July 1, 2016, ONRR published a final rule, *Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform* (2017 Valuation Rule). ONRR subsequently stayed the effective date of that rule pending resolution of litigation. As a result of the stay, the regulations in effect prior to January 1, 2017 (“pre-existing regulations”) remain in effect. In a separate notice, ONRR is seeking comments on a proposed rule to repeal the 2017 Valuation Rule to maintain the *status quo* in which the pre-existing regulations remain in effect while

ONRR reconsiders whether changes made by the 2017 Valuation Rule are needed or appropriate.

DATES: You must submit your comments by (**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**).

ADDRESSES: You may submit comments to ONRR on this ANPRM by any of the following methods. Please reference the Regulation Identifier Number (RIN) 1012-AA21 in your comments.

- Electronically: Go to <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter “ONRR-2017-0002,” then click “Search.” Follow the instructions to submit public comments. We will post all comments.
- Email comments to Luis Aguilar, Regulatory Specialist, at Luis.Aguilar@onrr.gov.
- Hand-carry or mail comments, using an overnight courier service, to the Office of Natural Resources Revenue, Building 53, Entrance E-20, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For questions on procedural issues, contact Luis Aguilar, Regulatory Specialist, ONRR, at (303) 231-3418 or email to Luis.Aguilar@onrr.gov. For questions on technical issues, contact Michael DeBerard, Asset Valuation, ONRR, at (303) 231-3884 or email to Michael.DeBerard@onrr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior’s authority to establish the value of Federal oil and gas production through regulations is contained in the mineral leasing statutes (43 U.S.C.

1334; 30 U.S.C. 189 and 359). Likewise, the Secretary of the Interior's authority to establish the value of Federal and Indian coal production through regulations is contained in the Indian Mineral Leasing Act of 1938, the Mineral Leasing Act, and the Mineral Leasing Act for Acquired Lands (25 U.S.C. 396d; 30 U.S.C. 189 and 359). In addition, virtually all Federal oil and gas and Federal and Indian coal leases expressly reserve to the Secretary the authority to establish the reasonable value of production or provide that the royalty value be set by regulation.

The 2017 Valuation Rule addressed Federal oil and gas and Federal and Indian coal valuation in one rulemaking. The 2017 Valuation Rule sought to (1) offer greater simplicity, certainty, clarity, and consistency in product valuation for mineral lessees and mineral revenue recipients; (2) ensure that Indian mineral lessors receive the maximum revenues from coal resources on their land, consistent with the Secretary's trust responsibility and lease terms; (3) decrease lessees' cost of compliance and ONRR's cost to ensure compliance; and (4) provide early certainty to ONRR and stakeholders.

Whether the 2017 Valuation Rule is repealed or retained, ONRR seeks to accomplish the goals outlined in that rulemaking. For additional information, see 81 FR 43338, dated July 1, 2016.

This ANPRM is intended to solicit comments and suggestions for two possible scenarios. If the 2017 Valuation Rule is repealed, ONRR seeks comments regarding whether a new valuation rule is needed and, if so, what particular issues the new valuation rule should address. Alternatively, if the 2017 Valuation Rule is not repealed, ONRR is seeking comments as to what changes should be made to ONRR's valuation

regulations in 30 CFR parts 1202 and 1206, as amended by the 2017 Valuation Rule.

Please segregate comments to each of these two scenarios.

Soliciting comments and involving all affected stakeholders early in the rulemaking process are the hallmarks of good government and smart business practice. The purpose of this rulemaking process is to provide regulations that would (1) offer greater simplicity, certainty, clarity, and consistency in production valuation for mineral lessees and mineral revenue recipients; (2) be easy to understand; (3) decrease industry's cost of compliance; and (4) provide early certainty to industry, ONRR, and stakeholders.

II. Public Comment Procedures

ONRR is not obligated to consider comments that we receive after the close of the comment period for this ANPRM, or comments that are delivered to an address other than those listed in the **ADDRESSES** section of this notice. After the comment period for this ANPRM closes, ONRR will review all comment submissions. Upon consideration, ONRR may publish a notice of proposed rulemaking.

A. Written Comment Guidelines

We are particularly interested in receiving comments and suggestions about the topics identified in section III, Description of Information Requested. Your written comments should: (1) be specific; (2) explain the reason for your comments and suggestions; (3) address the issues outlined in this notice; and (4) where possible, refer to the specific provision, section, or paragraph of statutory law, case law, lease term, or existing regulations that you are addressing.

The comments and recommendations that are most useful and have greater likelihood of influencing decisions on the content of a possible future proposed rule are: (1) comments and recommendations supported by quantitative information or studies; and (2) comments that include citations to, and analyses of, the applicable laws, lease terms, and regulations.

B. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Description of Information Requested

We are interested in submission of proposals that will lead to improved efficiencies for lessees, ONRR, and other stakeholders. In considering proposed changes to the existing Federal oil and gas royalty valuation regulations at 30 CFR parts 1202 and 1206, we have three goals in mind, as follows:

- Provide clear regulations that are understandable and consistent with fulfilling the Secretary's responsibility to ensure fair value for the public's resources.
- Provide valuation methods that are as efficient as practicable for lessees to use.
- Provide early certainty that correct payment has been made.

As discussed above, ONRR requests comments on two possible scenarios pending the outcome of the proposed rule to repeal the 2017 Valuation Rule. We recognize the

outcome of the proposed rule to repeal the 2017 Valuation Rule may not be known by the closing date of this ANPRM. Therefore, we encourage commenters to consider both of the two possible outcomes of that rulemaking when preparing their submissions as follows.

1. If the 2017 Valuation Rule is repealed, ONRR requests comments regarding whether a new rulemaking would be beneficial or is necessary. If commenters believe that a new rulemaking would be beneficial, ONRR requests comments regarding specific changes to the Federal oil and gas and Federal and Indian coal valuation regulations.
2. If the 2017 Valuation Rule is not repealed, ONRR requests comments regarding whether potential changes to the 2017 Valuation Rule are needed.

Possible topics include, but are not limited to:

- Whether ONRR should have one rule addressing Federal oil and gas and Federal and Indian coal valuation, or separate rulemakings.
- How best to value non-arm's-length coal sales and/or sales between affiliates.
- Whether ONRR should update the valuation regulations governing non-arm's-length dispositions of Federal gas, and if so, how.
- Whether ONRR should address marketable condition and/or unbundling, and if so, how.
- Whether ONRR should have a default provision clarifying how ONRR will exercise Secretarial authority to determine value for royalty purposes in cases where there is misconduct, breach of

duty to market, or ONRR cannot otherwise verify value. Other potential valuation methods or necessary changes to ONRR valuation regulations.

ONRR appreciates your participation and looks forward to receiving your comments.

Dated: March 30, 2017.

Amy Holley

Acting Assistant Secretary for Policy, Management and Budget

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