



[4335-30]

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

[Docket No. ONRR-2017-0001; DS63644000 DR2000000.CH7000

178D0102R2]

RIN 1012-AA20

Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) proposes to repeal the Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Rule that was published in the **Federal Register** on July 1, 2016 (“2017 Valuation Rule”).

Repeal of the 2017 Valuation Rule would maintain the current regulatory *status quo* by keeping the longstanding pre-existing regulations in effect.

DATES: You must submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments to ONRR on this proposed rulemaking by any of the methods listed below. Please reference the Regulation Identifier Number (RIN) 1012-AA20 in your comments. See also Public Availability of Comments under Procedural Matters.

- Electronically: Go to *www.regulations.gov*. In the entry titled “Enter Keyword or ID,” enter “ONRR-2017-0002,” and then click “Search.” Follow the instructions to submit public comments. We will post all comments.
- Email comments to Armand Southall, Regulatory Specialist, at *armand.southall@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 comments or questions on procedural issues, contact Armand Southall, ONRR, at (303) 231-3221, or email to *armand.southall@onrr.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2016, ONRR published in the **Federal Register** the Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Rule, which was effective on January 1, 2017 (2017 Valuation Rule). 81 FR 43338. The 2017 Valuation Rule changes how Federal oil and gas and Federal and Indian coal lessees value production for royalty purposes. It also revises revenue-reporting requirements.

On December 29, 2016, three different sets of petitioners filed three separate petitions challenging the 2017 Valuation Rule in the United States District Court for the District of Wyoming. In those lawsuits the petitioners allege that certain provisions of the 2017 Valuation Rule are arbitrary, capricious, and contrary to the law. The petitioners raise serious questions concerning the validity or prudence of certain provisions of the 2017

Valuation Rule, such as the expansion of the “default provision” and the use of the sales price of electricity to value coal.

In addition to initiating litigation, on February 17, 2017, the petitioners sent a joint letter to the ONRR Director. In that letter the petitioners asserted that the 2017 Valuation Rule’s new reporting and payment requirements would be difficult or impossible to comply with by the royalty reporting-deadline, a problem that would be exacerbated by the fact that non-compliant lessees may be exposed to significant civil penalties.

The petitioners’ lawsuits and correspondence echoed the concerns voiced by many industry representatives in workshops during the public comment period that preceded the 2017 Valuation Rule’s promulgation. Records of those workshops, industry comments, and other public comments may be viewed at https://onrr.gov/Laws_R_D/FRNotices/AA13.htm.

On February 27, 2017, in response to the petitioners’ lawsuits and their request to ONRR to stay implementation of the 2017 Valuation Rule, ONRR postponed implementation of the 2017 Valuation Rule, pending judicial review, by notice published in the **Federal Register**. 82 FR 11823.

ONRR is now proposing to repeal the 2017 Valuation Rule in its entirety. Repeal would be consistent with the President’s January 30, 2017, Executive Order on *Reducing Regulation and Controlling Regulatory Costs*. It would (a) preserve the regulatory status quo while ONRR reconsiders whether revisions are appropriate or needed to the pre-existing regulations governing royalty values; (b) avoid the costs to both government and industry of converting to controversial new royalty reporting and payment systems while the reconsideration takes place; (c) eliminate the need for continued and uncertain

litigation over the validity of the 2017 Valuation Rule, and (d) enhance the lessees' ability to timely and accurately report and pay royalties, because they would continue to use a well-known system that has been in place for decades.

ONRR's original intent behind the 2017 Rule was to offer greater simplicity, certainty, clarity, and consistency in product valuation and reporting for mineral lessees. But ONRR has since identified several areas in the rule that warrant reconsideration to meet policy and implementation objectives, including but not limited to, how to value coal production in certain non-arm's length transactions, how to value coal when the first arm's-length sale of the coal is electricity, how to value gas in certain no-sale situations, and under what circumstances, and on whom, ONRR's valuation determinations are binding. The repeal would allow ONRR to reconsider whether the changes made by the 2017 Valuation Rule are needed, while providing certainty and clarity to the regulated community during that reconsideration by continuing to require compliance with lawful, longstanding, and well known procedures. Absent repeal, ONRR would also be required to continue litigation over the 2017 Valuation Rule, even though that Rule may not reflect ONRR's current conclusions on how best to value production for royalty purposes. Concurrently with this notice, ONRR is publishing an Advance Notice of Proposed Rulemaking seeking comments on whether revisions are appropriate or needed to the pre-existing regulations governing royalty values, including comments on whether the 2017 Valuation Rule should ultimately be retained or repromulgated, in whole or in part.

ONRR's pre-existing valuation rules are still authorized by, and consistent with, applicable law, including 5 U.S.C. 301 et seq., 25 U.S.C. 396 et seq., 396a et seq., 2101

et seq.; 30 U.S.C. 181 et seq., 351 et seq., 1001 et seq.,1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.,1331 et seq., and 1801 et seq.

II. Explanation of Proposed Amendments

ONRR proposes to repeal the 2017 Valuation Rule in its entirety. If, following public comment, ONRR publishes a final rule repealing the 2017 Valuation Rule in its entirety, then 30 CFR parts 1202 and 1206 would revert to read as they did before ONRR promulgated the 2017 Valuation Rule. Part 1202 would read as published in the July 1, 2015, edition of title 30 of the *Code of Federal Regulations* (CFR), which is at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title30-vol3/pdf/CFR-2015-title30-vol3-part1202.pdf>. Part 1206 would read as published in the July 1, 2015, edition of title 30 of the *Code of Federal Regulations*, which is at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title30-vol3/pdf/CFR-2015-title30-vol3-part1206.pdf>.

III. Section-by-Section Analysis

The proposed and final rules for the 2017 Valuation Rule, including their section-by-section analyses, are at https://onrr.gov/Laws_R_D/FRNotices/AA13.htm. A repeal of the 2017 Valuation Rule would return each section to its reading prior to the July 1, 2016, publication of the 2017 Valuation Rule. With repeal, the section-by-section analyses may be found in the preambles for ONRR's and its predecessors' prior rulemakings as published in the **Federal Register**. The **Federal Register** volume and page number citations for those prior rulemakings, including their preambles, may be found in the *Code of Federal Regulations*, 30 CFR parts 1202 and 1206, as they existed before the July 1, 2016, publication of the 2017 Valuation Rule. For part 1202 the **Federal Register** citations are at [5](https://www.gpo.gov/fdsys/pkg/CFR-2015-title30-vol3/pdf/CFR-2015-</p></div><div data-bbox=)

title30-vol3-part1202.pdf. For part 1206, the **Federal Register** citations are at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title30-vol3/pdf/CFR-2015-title30-vol3-part1206.pdf>.

IV. Procedural Matters

1. Summary Cost and Royalty Impact Data

Repeal would negate the cost and royalty impact of the 2017 Valuation Rule. That cost and royalty impact is described in the final 2017 Valuation Rule, under Procedural Matters, item 1, starting at 81 FR 43359.

2. Regulatory Planning and Review (Executive Orders 12866, 13563, and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs dated January 30, 2017)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this proposed rule in a manner consistent with

these requirements.

The President's January 30, 2017, Executive Order on *Reducing Regulation and Controlling Regulatory Costs*, as implemented under February 2, 2017, Interim Guidance issued by OIRA, imposes certain requirements for every rule considered significant under E.O. 12866. First, every new significant rule requires the repeal of two rules. Second, an agency must fully offset the total incremental cost of significant new regulations, including repealed regulations, finalized in fiscal year 2017. Since this proposed rule—which is itself a repeal of an existing rule—is not a significant rule under E.O. 12866, it does not require the repeal of two other existing rules, and the agency is not required to offset its cost against the cost of other fiscal year 2017 rules.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the 2017 Valuation Rule, Procedural Matters, item 1, starting at 81 FR 43359, and item 3, starting at 81 FR 43367.

4. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more. We estimate the maximum effect as a reverse of the impacts described in the 2017 Valuation Rule, under Procedural Matters, item 1, starting at 81 FR 43359, and item 4, 81 FR 43368.
- b. Would not cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions. See the 2017 Valuation Rule, under Procedural Matters, item 1, starting at 81 FR 43359, and item 4, 81 FR 43368.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U. S.-based enterprises to compete with foreign-based enterprises. This proposed rule would benefit U.S.-based enterprises.

5. Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. This proposed rule would not have a significant or unique effect on State, local, or Tribal governments, or the private sector. Therefore, we are not required to provide a statement containing the information set out in the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). See the 2017 Valuation Rule, under Procedural Matters, item 1, starting at 81 FR 43359, and item 5 at 81 FR 43368.

6. Takings (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule would not have significant takings implications. This proposed rule would apply to Federal oil, Federal gas, Federal coal, and Indian coal leases only. This proposed rule would not be a governmental action capable of interference with constitutionally protected property rights. This proposed rule does not require a Takings Implication Assessment.

7. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The

management of Federal oil and gas leases and Federal and Indian coal leases is the responsibility of the Secretary of the Interior. This proposed rule would not impose administrative costs on States or local governments. This proposed rule also does not substantially and directly affect the relationship between the Federal and State governments. Because this rule, if promulgated as a final rule, would not alter that relationship, it does not require a Federalism summary impact statement.

8. Civil Justice Reform (E.O. 12988)

This proposed rule would comply with the requirements of E.O. 12988, for the reasons we outline in the following paragraphs. Specifically, this proposed rule:

a. Would meet the criteria of § 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. Would meet the criteria of § 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

9. Consultation with Indian Tribal Governments (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with the Indian Tribes through a commitment to consultation with the Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this proposed rule and determined that it would potentially affect Federally-recognized Indian Tribes. We determined that this rule would restore the historical valuation methodology for coal produced from Indian leases. Our previous and planned activities include:

(a) As described in the 2017 Valuation Rule under Procedural Matters, item 9, at 81 FR 43368, we consulted with the affected Tribes on a government-to-government basis in

preparing the 2017 Valuation Rule. We also will consult with the affected Tribes about potential repeal of the 2017 Valuation Rule.

(b) We will fully consider Tribal views in the final rule.

10. Paperwork Reduction Act

This proposed rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). *See* 5 CFR 1320.4(a)(2).

This proposed rule, if promulgated as a final rule, will leave in tack the information collection requirements that OMB already approved under OMB Control Numbers 1012-0004, 1012-0005, and 1012-0010.

11. National Environmental Policy Act of 1969 (NEPA)

This proposed rule would not constitute a major Federal action, significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this is “...of an administrative, financial, legal, technical, or procedural nature....” This rule also qualifies for categorical exclusion under Departmental Manual, part 516, section 15.4.(C)(1) in that its impacts are limited to administrative, economic, or technological effects. We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from the repeal of the 2017 Valuation Rule would have no consequences on the physical environment. This proposed rule would not alter, in any material way, natural resources

exploration, production, or transportation.

12. Effects on the Energy Supply (E.O. 13211)

This proposed rule would not be a significant energy action under the definition in E.O. 13211, and, therefore, would not require a Statement of Energy Effects.

13. Clarity of this Regulation

Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, would require us to write all rules in Plain Language. This means that each rule that we publish must: (a) have logical organization; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) use short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send your comments to *armand.southall@onrr.gov*. To better help us revise this rule, make your comments as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you think we wrote unclearly, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

14. 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 view, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Parts 1202 and 1206

Coal, Continental shelf, Government contracts, Indian lands, Mineral royalties, Natural gas, Oil, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: March 30, 2017.

Amy Holley

Acting Assistant Secretary for Policy, Management and Budget

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