



## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

#### 30 CFR Parts 1206 and 1241

[Docket No. ONRR-2020-0001; DS63644000 DRT000000.CH7000 212D1113RT]

RIN 1012-AA27

### ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date;

### Request for Public Comment

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

**ACTION:** Final rule; delay of effective date and opening of comment period.

**SUMMARY:** In accordance with the January 20, 2021 White House Memorandum on Regulatory Freeze Pending Review and the Office of Management and Budget Memorandum M-21-14 of the same date, this action delays the effective date of the final rule entitled “ONRR 2020 Valuation Reform and Civil Penalty Rule” that published in the *Federal Register* on January 15, 2021 (“2020 Rule”). In addition, this action opens a 30-day comment period to allow interested parties to comment on the impact of the delay to the 2020 Rule’s effective date as well as issues of fact, law, and policy raised by that rule.

**DATES:** *Effective date:* This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The effective date of the 2020 Rule, published in the *Federal Register* at 86 FR 4612, is delayed for 60 days, from February 16, 2021 to April 16, 2021.

*Comment Period:* To be assured consideration, comments must be received at one of the addresses provided below, by 11:59 pm EST on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments to ONRR using either of the following methods. Please reference the Regulation Identifier Number (“RIN”) for this action, “RIN 1012-AA27” in your comment:

- *Electronically via the Federal eRulemaking Portal:* Please visit <https://www.regulations.gov>. In the Search Box, enter Docket ID “ONRR-2020-0001” and click “search” to view the publications associated with the docket folder. Locate the document with an open comment period and then click “Search.” Follow the instructions to submit your public comments prior to the close of the comment period.
- *Email Submissions:* For comments sent via email, please address them to Dane Templin, Regulations Supervisor, at [Dane.Templin@onrr.gov](mailto:Dane.Templin@onrr.gov) and Luis Aguilar, Regulatory Specialist, at [Luis.Aguilar@onrr.gov](mailto:Luis.Aguilar@onrr.gov) with “RIN 1012-AA27” listed in the subject line of your message. Email submissions must be postmarked on or before the close of the comment period.

*Instructions:* All comments must include the agency name and docket number or RIN for this rulemaking. All comments, including any personal identifying information or confidential business information contained in a comment, will be posted without change to <https://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and locate the docket folder by searching the Docket ID (ONRR-2020-0001) or RIN number (RIN 1012-AA27).

**FOR FURTHER INFORMATION CONTACT:** For questions on procedural issues, contact Dane Templin, Regulations Supervisor, at (303) 231-3149 or [Dane.Templin@onrr.gov](mailto:Dane.Templin@onrr.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 15, 2021, ONRR published a final rule in the *Federal Register*, at 86 FR 4612, to amend certain regulations that inform the manner in which ONRR values oil and gas produced from Federal leases for royalty purposes; values coal produced from Federal and Indian leases for royalty purposes; and assesses civil penalties for violations of certain statutes, regulations, leases, and orders associated with mineral leases. In addition, the rule, referred to as the 2020 Rule, made some minor, non-substantive corrections to ONRR's regulations. The 2020 Rule had an effective date of February 16, 2021, and, for amendments to 30 CFR Part 1206, a compliance date of May 1, 2021.

## **II. Purpose of this Action**

On January 20, 2021, the Assistant to the President and Chief of Staff issued a memorandum entitled "Regulatory Freeze Pending Review" ("Regulatory Freeze Memorandum") which, along with the guidance on implementation of the memorandum issued by the Office of Management and Budget ("OMB") in Memorandum M-21-14 dated January 20, 2021, directs agencies to consider delaying the effective date of rules published in the *Federal Register* that have not yet become effective, consistent with applicable law, for the purpose of reviewing any questions of fact, law, and policy the rules may raise.

The OMB memorandum directed that the decision to delay should include consideration of whether:

- (1) the rulemaking process was procedurally adequate;
- (2) the rule reflected proper consideration of all relevant facts;
- (3) the rule reflected due consideration of the agency's statutory or other legal obligations;
- (4) the rule is based on a reasonable judgment about the legally relevant policy considerations;
- (5) the rulemaking process was open and transparent;

- (6) objections to the rule were adequately considered, including whether interested parties had fair opportunities to present contrary facts and arguments;
- (7) interested parties had the benefit of access to the facts, data, or other analyses on which the agency relied; and
- (8) the final rule found adequate support in the rulemaking record.

In light of the withdrawal of existing and issuance of new Executive Orders relevant to the matters addressed in the 2020 Rule after its publication date, which are discussed further below, and protracted litigation over ONRR's recent rulemakings, ONRR concludes that postponement of the 2020 Rule and invitation for public comment is appropriate under criteria three and four above. Further, ONRR appreciates the strong public interest in its rulemakings and is especially interested in public comments on each of the eight decision criteria with respect to the 2020 Rule.

Accordingly, this action delays the effective date of the 2020 Rule and opens a 30-day comment period on the facts, law, and policy underlying the rule as well as the effect of the delay. ONRR is delaying the effective date of its 2020 Rule from February 16, 2021, to April 16, 2021.

The 60-day delay of the 2020 Rule's effective date—based on the good cause articulated below—is for the purpose of reviewing any questions of fact, law, and policy that are raised by that rule as well as the effect of the delay, consistent with the Regulatory Freeze Memorandum and OMB Memorandum M-21-14. To that end, ONRR invites the public to submit comment on any issue of fact, law, or policy raised by the 2020 Rule, including, without limitation, comment on the following:

1. The 2020 Rule was premised, in part, on certain Executive Orders that are no longer in effect, including Executive Orders 13783 “Promoting Energy Independence and Economic Growth,” 13795 “Implementing an America-First Offshore Energy Strategy,”

and 13892 “Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication.” Also, new Executive Orders, including Executive Orders 13990 “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” 13992 “Revocation of Certain Executive Orders Concerning Federal Regulation,” and 14008 “Tackling the Climate Crisis at Home and Abroad,” have been issued from and after January 20, 2021. Does the repeal of prior Executive Orders and issuance of new Executive Orders demonstrate a change in policy meriting or requiring reconsideration of some or all of the 2020 Rule?

2. The 2020 Rule reinstated an allowance for certain deepwater oil and gas gathering costs based, at least in part, on declining oil and gas production and revenues from the Gulf of Mexico, which allowance is estimated to reduce royalty due the United States by \$32.9 million per year. Is this allowance consistent with the current law and policy of the United States?

3. The 2020 Rule reinstated extraordinary processing allowances, which allowances are estimated to reduce royalty due the United States by \$11.1 million per year. Are extraordinary processing allowances consistent with the current law and policy of the United States in the limited circumstances described in the 2020 Rule?

4. Should the Department of the Interior (“the Department”) consider science on the source and impacts of climate change in setting royalty and revenue management policy?

5. The 2020 Rule extended an option given to oil and gas lessees under an ONRR 2016 rulemaking to use an index-based valuation method to value gas and natural gas liquids for royalty purposes. The option—previously only available for non-arm’s-length transactions—was extended to arm’s-length transactions. The economic analysis of the extension of the option to arm’s-length transactions assumed as fact that one-half of eligible lessees would elect the option and that one-half would not. As a result, the rule

concluded that those lessees that elect the index-based valuation option may pay an additional \$26.76 million per year in royalties, though the election could save those lessees approximately \$1.35 million in administrative costs. ONRR assumed as fact that a significant number of lessees will elect the index-based valuation option even though doing so would result in their paying royalties exceeding the administrative cost savings they would realize. If that assumption of fact is flawed, is the resulting conclusion still appropriate and supported by current law and policy?

6. Does the index-based valuation option adopted in the 2020 Rule support ONRR's goals of clarity, early certainty, and transparency in royalty valuation?

7. The Department has long viewed the gross proceeds received under an arm's-length contract between independent persons who are not affiliates and who have opposing economic interests to be the best indicator of value in most circumstances. *See, e.g.*, 53 FR 1186 (Jan. 15, 1988); 81 FR 43338 (July 1, 2016). Should ONRR have given lessees the option to substitute an index-based value for one based on arm's-length sales, including in situations where that election may reduce the royalties owed to the United States?

8. OMB Memorandum M-21-14 requires agencies to consider, among other things, whether the rulemaking process was procedurally adequate and whether interested parties had a fair opportunity to present contrary facts and arguments. Do you believe procedural issues exist in the 2020 Rule's rulemaking process and, if so, what are those issues and what could ONRR do to remedy those issues?

9. What would be the impact of a potential further delay of 60 to 120 days in the effective date of the 2020 Rule?

10. Should the 2020 Rule be amended, rescinded, delayed pending further review by the agency, or allowed to go into effect?

### **III. Good Cause Under the Administrative Procedure Act**

This rule's delay of the 2020 Rule's effective date, without prior opportunity for public comment, will become effective immediately upon publication in the *Federal Register*. The immediate effective date is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3), in that seeking public comment is impractical and contrary to the public interest.

The 60-day delay in the effective date of the 2020 Rule is necessary to allow opportunity for further review and consideration of that rule, consistent with the January 20, 2021 White House Memorandum on Regulatory Freeze Pending Review and the Office of Management and Budget Memorandum M-21-14 of same date on implementation of the White House Memorandum, as well as the withdrawal of the Executive Orders on which the 2020 Rule was, in part, based and the issuance of new Executive Orders. Given the imminence of the 2020 Rule's effective date, seeking prior public comment on this short delay would interfere with the public's interest in the orderly promulgation and implementation of regulations. A period of public notice and comment of any appreciable length would mean that the rule would go into effect before the agency was able to undertake a meaningful review of the 2020 Rule. Subsequent action to modify or rescind an effective rule would then create further confusion among regulated entities and other interested parties.

In the questions posed for comment in this document, the Department has identified several factors illustrating potential weaknesses of the 2020 Rule and the need for additional public participation. Delaying the effective date provides certainty for the regulated industry while ONRR reconsiders the 2020 Rule, and prevents a situation wherein regulated entities would update their reporting systems in anticipation of compliance with a rule that may be subject to further revision, following notice and comment. The extensive litigation on prior ONRR's rulemakings further highlights the need for ONRR to take steps that ensure transparency and provide certainty in the

adequacy and finality of the 2020 Rule. Thus, ONRR finds that it would be contrary to the public interest for the 2020 Rule to become effective, with its accompanying changes in reporting and payment requirements, which require extensive IT system, accounting, and other business process modifications, until it is certain that all public comments, including any additional comments that are submitted in the new comment period, are received and considered. To do otherwise could potentially result in uncertainty and confusion regarding reporting and payment requirements that could lead to duplication of effort, an unnecessary increase in administrative costs, and strain placed on lessees and recipient states as ONRR and the public struggle with application and interpretation of the valuation and payment rules.

This action delays the effective date of the 2020 Rule that was promulgated through notice and comment rulemaking. A delay in the effective date and opening of a new 30-day comment period is necessary to ensure that ONRR has the opportunity to receive and is able to consider additional public comments to fully inform its decisions in light of current law and policy before the 2020 Rule becomes effective.

The White House memorandum also recommends that, for rules postponed for further review, agencies consider opening a 30-day comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by those rules, and consider any requests for reconsideration involving such rules. Consistent with this guidance, after reviewing comments received pursuant to this notice, ONRR may determine there is a need to postpone the effective date further to allow additional time to consider issues of fact, law, and policy or to reconsider the 2020 Rule.

This rule provides notice and invites public comments on a potential further extension and requests interested parties to provide comments about issues of fact, law, and policy raised by the rule, so that ONRR can consider any requests for reconsideration involving the rule. As part of a further delay, ONRR may also invite additional public

comments on whether the rule should be amended, rescinded, delayed pending further review by the agency, or allowed to go into effect.

For the reasons stated above, ONRR finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to publish this action without prior notice and comment, and for this action to become effective immediately upon publication in the *Federal Register*.

**List of Subjects**

*30 CFR Part 1206*

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 1241*

Administrative practice and procedure, Coal, Geothermal energy, Indians-lands, Mineral royalties, Natural gas, Oil and gas exploration, Penalties, Public lands-mineral resources.

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Rachael S. Taylor,  
*Senior Advisor to the Secretary and exercising the delegated authority of the Assistant Secretary - Policy, Management, and Budget*  
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