Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Managment Service (MMS), Interior.

ACTION: Notice of proposed modification to *Notice to Lessees-5.*

SUMMARY: The Minerals Managment Service (MMS) is proposing to change the effective date of the recently adopted modifications to Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-5). These modifications published in the Federal Register on July 25, 1986 (51 FR 26759), prescribe the procedures to be used to determine the value of natural gas production for royalty purposes. No other changes to NTL-5 are proposed.

DATE: Comments must be received on or before February 17, 1987.

ADDRESS: Comments should be sent to: Minerals Managment Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, Attention: Dennis Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, telephone: (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION:.

I. Background

On July 25, 1986 (51 FR 26759), MMS modified Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-5). The purpose of the modifications was to permit MMS to use the full range of its authority under the royalty valuation regulations in 30 CFR Part 206 when valuing natural gas. The changes allow MMS to consider market conditions and other factors, rather than the automatic application of only one valuation criterion.

In the Notice of Proposed Modification to NTL-5 (51 FR 260, January 3, 1986), MMS specifically asked for comment on whether the changes should be made retroactive. Comment was requested on this issue because MMS had recognized that the changes in the gas market which necessitated the modification to NTL-5 actually began to occur long before. Over 50 comments were received on this issue (see discussion of comments at 51 FR 26764-26765), and after consideration of these comments, MMS decided at that time not to make the modifications retroactive.

Since the conclusion of that rulemaking, MMS has continued to analyze the retroactivity issue. In addition, MMS has received many complaints from royalty payors that application of the original provisions of NTL-5 to gas production during the period from 1982 to 1986, leads to results that are, in many instances, unreasonable and contrary to the purpose of the Mineral Lands Leasing Act of 1920 and other mineral leasing laws appliable to onshore Federal and Indian leases. Specifically, it has been stated by at least one commenter that under Section I.A.2. of the original NTL-5 which establishes the value, for royalty purposes, of certain interstate gas as the Federal Energy Regulatory Commission (FERC) ceiling price, value may be six to eight times as high as the price the lessee actually realized from sales of its gas. In such a case, the result would be that the producer would be required to pay in royalties almost all of its proceeds from the sale of the gas. In other situations, the FERC ceiling price may be two to three times the price at which such gas actually can be sold. Although MMS recognizes that such disparities between royalty values established under section I.A.2. of NTL-5 and the price at which the lessee can maket its gas did not occur in all situations, it is sufficiently prevalent that MMS is reconsidering whether or not the recently adopted changes to NTL-5 should be made retroactive to an earlier date.

The MMS has long maintained that the value for royalty purposes may exceed a lessee's proceeds from the sale of the gas, and this principle has been upheld in a number of cases. *Continental Oil Co.* v. *U.S.*, 184 F.2d 802 (9th Cir. 1950); *U.S.* v. *Ohio Oil Co.*, 163 F.2d 633 (10th Cir. 1947). However, the Cases also require that the royalty values established be "reasonable." During the period May 1, 1982, to August 1, 1986, application of NTL-5 may result in the establishment of royalty values for some gas production which could be considered to be unreasonable. By way of illustration, there may be situations where, because of market conditions, all the gas production in a field or area may be sold at a price significantly below the FERC ceiling price. Rather than be required to automatically apply the provisions of NTL-5 in such situations, MMS should have the flexibility to consider other valuation criteria to determine a reasonable royalty value. Although the royalty value so determined could be, and in many cases would be, in excess of the proceeds received by the lessee, those values would more closely reflect actual market conditions than would a FERC ceiling price which may be in excess of what such gas actually can sell for in the market.

The modifications NTL-5, if made retroactive, would give MMS the necessary flexibility under its regulations to establish reasonable royalty values. In many instances, these values would continue to be the FERC ceiling prices. However, in situations where the FERC ceiling price no longer reflects a reasonable value, MMS could establish a different value consistent with the regulations in 30 CFR 206.103.

Therefore, MMS is proposing to change the effective date of the NTL-5 modifications to an earlier date. However, MMS is proposing that the retroactive date be different for the various categories of gas regulated under the Natural Gas Policy Act (NGPA) by the Federal Energy Regulatory Commission (FERC). The modification to NTL-5 for establishing royalty values would not be effective until the date that a specific category of gas began to be subject to so-called "market-out" clauses whereby the purchaser of the gas was able, because of market conditions, to force the price of gas below the FERC ceiling price. For example, for NGPA category 107 gas, the effective date of modification of NTL-5 would be May 1, 1982. However, the original terms of NTL-5 would continue to apply to the other categories of gas until the respective dates as proposed in the following table:

The effective dates would be as follows:

NGPA category	Effective date of modification
107 16 U.S.C. 3317	May 1, 1982
108 16 U.S.C. 3318	Mar. 1, 1983
102, 105 16 U.S.C. 3312, 3315	Jul. 1, 1983
103 16 U.S.C. 3313	Jan. 1, 1985
104, 106, and 109 16 U.S.C. 3314, 3316, and 3319.	Mar. 1, 1985

As noted earlier, after the effective date of modification, gas would be valued in accordance with the provisions of 30 CFR part 206. However MMS could, but would not be required to, accept the contract price as value for royalty purposes. For example, if in July 1982, lessees A and B are marketed out to a price 50 cents below the FERC ceiling price (which is similar to the market-outs of other sellers in the field or area) and lessee C markets out to a price two dollars below the FERC ceiling, MMS likely would accept the contract price as value for lessees A and B but not for C. MMS also would apply close scrutiny to non-arm's-length contracts to determine whether the lower prices actually were the result of market forces.

Commenters are requested to address the propriety of the above-listed effective dates for the retroactive modifications. Commenters also are requested to identify whether or not any other criteria should be applied such as limiting the modifications to arm's-length contracts.

MMS also would like commenters to address the issue of whether or not the retroactive changes to NTL-5 should apply to Indian leases. For the past several years, a few lessees have paid royalties at the original NTL-5 value, generally as the result of audits. If the modifications to NTL-5 are made retroactive, some of these lessees may be entitled to a refund which would require recoupment from the Indian lessors. MMS would like comments to help it assess the extent of such situations and the impact caused Indian lessors if recoupments occur. As an alternative, if MMS does apply the NTL-5 modifications retroactively to Indian leases, then it is proposed that any recoupment be effected equally over a 12-month period so as to minimize any hardship, subject to the existing limitation that a recoupment, for individual allottees, cannot exceed 50 percent of a current month's royalty liability.

II. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under E.O. 12291 and certifies that this document will 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.*). The net effect of this proposal will result in some reduction in royalty revenues but is not expected to be significant. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

National Environmental Policy Act of 1969

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

Dated: December 30, 1986.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

[FR Doc. 87-928 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30952]

New Orleans Terminal Company—Contract To Operate Properties of Louisiana Southern Railway Company; Exemption

New Orleans Terminal Company (NOT) and Louisiana Southern Railway Company (LAS) have filed a notice of exemption for the operation under contract of LAS' properties[1] by NOT, beginning December 31, 1986. NOT and LAS are wholly owned subsidiaries of The Alabama Great Southern Railroad Company (AGS)[2].

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Use of this exemption is subject to the employee protective conditions in *Norfolk & W. Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke this exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Nancy S. Fleischman, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

Dated: January 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

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[1] The properties consist of approximately 21 miles of railroad line in and around New Orleans, LA, serving 7 customers and 2 team tracks.

[2] AGS is controlled by Southern Railway Company which in turn is controlled by Norfolk Southern Corporation.

[Finance Docket No. 30959]

R.J. Corman Railroad Corporation—Exemption Acquisition and Operation—Certain Lines of CSX Transportation, Inc.; Exemption

R.J. Corman Railroad Corporation (Corman) has filed a Notice of Exemption to acquire and operate 20 route miles of line of CSX Transportation, Inc. from Bardstown Junction, KY (milespost 22.07) to Wickland, KY (milepost 42.00). Any comments must be filed with the Commission and served on: Deborah A. Phillips, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797, (202) 628-2000 and Richard W. Bond, Senior Manager—Shortline Marketing, CSX Transportation, Inc. 500 Water Street, Jacksonville, Florida 32202, (904) 359-1156. This transaction will also involve the issuance of securities by Corman. Because Corman will be a Class III carrier, the issuance of these securities will be an exempt transaction under 49 CFR 1175.1 (51 FR 4928 (February 10, 1986)).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio. Petitions to revoke the* exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 30, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-899 Filed 1-14-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; SENCO Products, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 5, 1987, a *proposed consent decree in United States* v. *SENCO Products, Inc.*, Civ. No. C-1-87-009, was lodged with the United States District Court for the Southern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against SENCO Products, Inc. for violations of the Clean Air Act at its coating facility in Cincinnati, Ohio.

The Consent Decree achieves compliance with the Ohio SIP in the following manner. First, SENCO has