

§ 3192.12 What activities may Tribes or States perform under cooperative agreements?

Activities carried out under the cooperative agreement must be in accordance with the policies of the appropriate BLM State or field office and as specified in the agreement, and may include—

- (a) Inspecting tribal oil and gas leases for compliance with BLM regulations;
- (b) Issuing initial Notices of Incidents of Non-Compliance, Form 3160-9, and Notices to Shut Down Operation, Form 3160-12;
- (c) Conducting investigations; or
- (d) Conducting oil transporter inspections.

§ 3192.13 What activities must BLM keep?

- (a) Under cooperative agreements, BLM continues to—
 - (1) Issue Notices of Incidents of Noncompliance that impose monetary assessments and penalties;
 - (2) Collect assessments and penalties;
 - (3) Calculate and distribute shared civil penalties;
 - (4) Train and certify Tribal or State inspectors;
 - (5) Issue and control inspector identification cards; and
 - (6) Identify leases to be inspected, taking into account the priorities of the Tribe.
- (b) Entering into a cooperative agreement does not affect the right of BLM to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

§ 3192.14 What are the requirements for Tribal or State inspectors?

- (a) BLM must certify Tribal or State inspectors before they conduct independent inspections on Indian oil and gas leases.
- (b) The standards for certifying Tribal or State inspectors must be the same as the standards used for certifying BLM inspectors.
- (c) Tribal and State inspectors must satisfactorily complete on-the-job and classroom training in order to qualify for certification.
- (d) Tribal or State inspectors must not—
 - (1) Inspect the operations of companies in which they, a member of their immediate family, or their immediate supervisor, have a direct financial interest; or
 - (2) Use for personal gain, or gain by another person, information he or she acquires as a result of his or her participating in the cooperative agreement.

§ 3192.15 May cooperative agreements be terminated?

- (a) Cooperative agreements may be terminated at any time if all parties agree to the termination in writing.
- (b) BLM may terminate an agreement without Tribal or State agreement if the—
 - (1) Tribe or State fails to carry out the terms of the agreement; or
 - (2) Agreement is no longer needed.

§ 3192.16 How will I know if BLM intends to terminate my agreement?

- (a) If BLM plans to terminate your agreement because you did not carry out the terms of the agreement, BLM must send a notice to you that lists the reasons BLM plans to terminate the agreement.
- (b) You must send BLM a plan to correct the problems BLM listed in the notice.
- (c) If you submit a plan for correction and BLM approves the plan, you have 30 days to correct the problem(s).
- (d) If you have not corrected the problem within 30 days, BLM will send you a second termination notice.
- (e) If you do not respond to the second notice within 30 days, BLM will terminate the agreement.

§ 3192.17 Can BLM reinstate cooperative agreements that have been terminated?

- (a) If your cooperative agreement was terminated by consent, you may request that BLM reinstate the agreement.
- (b) If BLM terminated an agreement because you did not carry out the terms of the agreement, you must prove that you have corrected the problem(s) and are able to carry out the terms of the agreement.
- (c) BLM will then decide whether or not your cooperative agreement may be reinstated and, if so, whether you must make any changes to the agreement before it can be reinstated.

§ 3192.18 Can I appeal a BLM decision?

Yes, you may appeal a BLM decision under the provisions of 43 CFR part 4.

Dated: March 31, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

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DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, 3480

[WO-320-1320-02-1A]

RIN 1004-AD11

Coal Management Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management (BLM) requests comments to assist in the revision of its regulations governing coal operations on Federally leased lands. The purpose of the revision is to clarify and streamline current processes and policies related to exploration and post-lease actions and to comply with the President's Government-wide regulatory reform initiative to eliminate, streamline, or rewrite regulations in plain English. The proposed rule will reorganize, clarify and revise portions of the existing Federal coal management program regulations, including exploration licenses, lease suspensions, lease administration, diligence, and exploration and mining operations on leased Federal coal. Many of the changes contemplated will be administrative and procedural in nature and provide more explicit and coherent direction for situations not anticipated by the existing regulations.

DATES: BLM will accept comments until 5:00 p.m. Eastern time on May 9, 1997. BLM will not necessarily consider comments received after this time in developing the proposed rule or include them in the administrative record.

ADDRESSES: Commenters may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, D.C. 20240; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. See the **SUPPLEMENTARY INFORMATION** section for the electronic access and filing address. Comments will be available for public review at the L Street address from 7:45 a.m. to 4:15 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bill Radden-Lesage, (202) 452-0350 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Description of Information Solicited

I. Public Comment Procedures

Your written comments should be specific; be confined to issues outlined in the notice; explain the reason for any recommended change; and where possible, reference the specific section or paragraph of the current regulations which you are addressing. BLM appreciates any and all comments, but those most useful and likely to influence decisions on the content of the proposed rule are those that either are supported by quantitative information or studies or include citations to and analyses of the applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. Comments received after the time indicated under the **DATES** section or at locations other than those listed in the **ADDRESSES** section will not necessarily be considered or included in the administrative record of this rule.

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to WOCComment@wo.blm.gov. Please submit comments as an ASCII file and avoid the use of special characters or encryption. Please include "Attn: AD11" and your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452-5030.

II. Background

On July 12, 1991, BLM published a proposed rule to simplify and streamline existing Federal coal management program regulations at 43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, and 3480 (56 FR 32002). This rule proposed to revise portions of the existing Federal coal management program regulations, specifically those relating to exploration licenses, lease suspensions, lease management, diligence, and exploration. In response to this proposal, BLM received 31 sets of comments. The initial comment period was to close on September 12, 1991, but was extended an additional 30 days, closing on October 12, 1991. Subsequently, BLM completed its analysis and prepared a draft final rule.

On March 4, 1995, the President issued a memorandum to all Federal Departments and Agencies directing them to simplify their regulations. BLM reviewed its rules and identified about

1,000 pages in the Code of Federal Regulations that would be eliminated, streamlined or rewritten in "plain English." Because the draft rules were written before the regulatory reform initiative, they were not written in plain English and therefore, required redrafting.

In October 1996, the National Mining Association (NMA) requested that BLM repropose this rulemaking due to the Association's perception that substantial restructuring and other changes in the electric utility industry have occurred since the comment period on the 1991 proposed rule. NMA asserted that additional public comment was warranted due to deregulation of the electric transmission industry, implementation of the Clean Air Act Amendments of 1990, the need to preserve industry's flexibility to accommodate dynamic changes in coal markets, and the need to avoid imposing additional regulatory burdens. BLM also received a request from a Senator in a prominent coal-producing State objecting to final promulgation of the 1991 regulations due to his concern that there have been changes in the market since 1991. To give interested members of the public the opportunity to identify any changes in the industry and coal markets which may not have been considered in the 1991 proposal and to recommend regulatory modifications that may be warranted as a consequence of these changed circumstances, BLM withdrew the 1991 rulemaking on its coal management program on February 14, 1997 (see 62 FR 6910). This notice is intended to solicit additional information relating to any relevant changes which have occurred since 1991 in the coal industry and coal markets and how such changes affect BLM's regulatory program.

III. Description of Information Solicited

Many of the changes BLM is planning to make are for the purpose of streamlining and clarifying the coal management regulations. Readers should note that BLM does not plan to address public participation in the coal leasing process in this rulemaking effort. That topic will be addressed separately, in connection with a pending case, *Environmental Policy Institute v. Baca*, No. 93-5029 (D.C.Cir.), appealing *NRDC v. Jamison*, 815 F.Supp. 454 (1992). Therefore, BLM is not soliciting comments on public participation in the coal leasing process at this time. Nor is BLM now soliciting additional comment on issues raised by our pending logical mining units rule, which was proposed on December 28, 1994 (59 FR 66874).

Areas we are considering for proposed revision include, but are not limited to the following:

- Definitions of terms, including "commercial quantities," "continued operation," and "maximum economic recovery;"
- Incidental exploration;
- Duration of licenses to mine;
- Application of 30 U.S.C. 201(a)(2)(A) to lessee qualifications;
- Acceptable payment instruments for fees and rentals;
- Clarification that the 8% royalty rate for coal produced by underground mining operations does not apply to existing leases issued with a higher royalty rate;
- Types of lease assignments requiring BLM approval;
- Notification requirements for lease readjustments;
- Use of the Office of Surface Mining Applicant Violator System under 30 CFR 773.15(b) to screen applicants;
- Lease suspensions;
- Use or sale of coal extracted for "test burns";
- Royalty rate reductions; and
- Inspection and enforcement and production verification.

Other revisions to the current coal management regulations may also be considered, but in general, the scope of this rulemaking is expected to be limited to exploration and post-lease actions.

BLM requests specific quantitative information and documentation as to:

- (1) changes in the coal industry and markets since 1991;
- (2) how these changes relate to the current rules;
- (3) the impacts of these changes (and their extent or magnitude) on coal operations on Federal lands and non-Federal lands; and
- (4) any suggestions as to how these impacts can be addressed within the current statutory or regulatory framework, and if they cannot be addressed within the current regulations, the need for and nature of any regulatory changes suggested.

We also welcome suggestions for consolidation, reorganization, and improvements in clarity and readability.

Dated: April 3, 1997.

Sylvia V. Baca,

Acting Assistant Secretary for Land and Minerals Management.

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