

Brief: Federal Coal Program Review

January 2017

In January 2016, the Secretary of the Interior directed the Bureau of Land Management (BLM) to conduct a broad, programmatic review of the federal coal program by preparing a Programmatic Environmental Impact Statement (PEIS) to identify and evaluate potential reforms. In January 2017, the BLM concluded the first stage in the multi-year review by publishing a PEIS Scoping Report that surveys the current state of the federal coal program and identifies areas for reform. Background information on the process and its first year is presented below.

Overview of the Federal Coal Program

Management of the federal coal program has large implications for taxpayers, the coal sector, and the U.S. energy landscape. The BLM administers 306 coal leases nationwide, covering 482,691 acres in 11 States, with an estimated 7.75 billion tons of recoverable federal coal. Coal produced from those leases on federal lands accounts for more than 40 percent of all U.S. coal production.

The Coal Review Process

Over the last few years, the Government Accountability Office, the Department of the Interior (DOI) Inspector General, and non-government groups including Taxpayers for Common Sense have identified problems with the federal coal program. Their findings prompted the Department of the Interior to begin assessing the federal coal program in the summer of 2015 by holding a series of “Listening Sessions” in four western states and Washington, DC. By September 2015, the BLM had received more than 1,200 unique written comments from outside groups and the public. According to the BLM, the first biggest concern was that “American taxpayers are not receiving a fair return for the leasing of public coal resources.”¹

On January 15, 2016, the Secretary of the Interior launched the first comprehensive review of the federal coal program since the 1980s. In conjunction with the announcement, the BLM issued a moratorium on new coal lease sales. The moratorium would have no impact on production on active federal leases, and would not apply to sales that met certain criteria.

In May and June of 2016, the BLM held six public meetings to solicit input from the public about the appropriate scope of the review. At those meetings, the BLM heard 464 oral testimonials and in total, received more than 1,100 unique comments on the scoping process.²

The Scoping Report

On January 11, 2017, the BLM published the PEIS scoping report that identifies the issues the agency plans to address in the review. According to the scoping report, “A central objective of the BLM’s reform effort for the Federal coal program is the level of return that it provides to the American public.” The

¹ Bureau of Land Management. “Final Scoping Report for the Federal Coal Program Review PEIS_Vol I.” January 11, 2017. Page 2-2.

² Ibid. Page 4-3.

BLM reports that it will assess the following options for the degree to which they could improve fair return to the taxpayer:

- **Royalty Rate Increase:** The BLM will evaluate the ability of using the royalty rate to better reflect Fair Market Value (FMV) and assess the impacts of increasing the royalty rate on Federal coal.
- **Fair Market Value Transparency:** The BLM will consider various ways to build on processes that improve consistency and transparency in the FMV calculation process without jeopardizing the competitive process.
- **Royalty Rate Reductions:** The BLM will evaluate its current use of royalty rate reductions and consider ways to limit the use of those reductions.
- **Rental Rate:** The BLM will consider increasing the rental rate associated with coal leases, which is currently set at a minimum \$3 per acre as established in 1979.
- **Minimum Bonus Bid:** The BLM will consider raising the minimum bonus bid for coal leases that is currently set at \$100 per acre and was established in 1982.
- **Strategic Coal Leasing Plans:** The BLM will consider the development of strategic coal leasing plans as a means to guide Federal coal leasing for a given region or nationally.

The Need for Reform

The problems with the existing federal coal program can be summarized as follows:

1. The Leasing Process: The leasing process generally used by the BLM does not obtain fair market value for federal coal. Competitive bids are seldom generated, and studies indicate that the resulting losses for taxpayers are substantial. In particular, the leasing process is hampered in achieving a fair return by the following issues:
 - a. Coal Production Regions Designations
 - b. Lease-by-Application (“LBA”) System
 - c. Lease Modifications
2. Fair Market Value Calculation: In the absence of a competitive system, accurate determinations of coal values are critical to the revenues realized by the government. “Value” or “fair market value” enters into the lease sale and management processes at several points, and serves as the basis for evaluating lease sale bids and lease prices paid, which, in turn, influence coal prices and calculations of royalty revenues. The data and methodology the BLM uses to determine FMV are not publicly available. Bids are sealed. The public has no idea what the coal is worth or how it was valued. Final lease sale values can be used as comparables for estimating values of new tracts. Thus, when value estimates are low, it is possible to lock in a system of continuing undervalued leases.
3. Royalty Rates: The industry has argued at times that the taxes coal companies pay to local, state, and federal governments should offset the royalties they pay for the right to mine and sell federal coal. Just because the coal industry pays taxes, like every other industry, does not mean it should not pay fair market value for federal coal. Private landowners charge royalties on the market value of private coal, in addition to whatever taxes the companies might pay. The BLM should also charge market-based royalties.

4. Royalty Valuation: Valuation of the minerals is a key component of the leasing process. Numerous studies have demonstrated how coal companies manipulate the current valuation system to reduce royalty payments. The Office of Natural Resource Revenue (ONRR) released its final rule governing the valuation of federal coal on June 30, 2016. The updated rule is certainly an improvement, but well-documented problems with coal valuation were not eliminated.
5. Reclamation and Bonding Requirements: The Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires coal mining operators to restore all land affected by their operations and to post a bond to cover reclamation costs if they fail to restore the land. With many coal companies in bankruptcy, the ability of BLM to implement the law's bonding requirements, particularly in allowing "self-bonding," is questionable.
6. Royalty Rate Reductions: According to data obtained from ONRR, the BLM has often reduced the royalty rates on federal coal leases during the last 25 years. Of 80 federal leases in 9 states, 35 of them (44 percent) recorded royalty rates less than the minimum of 12.5 percent for surface mines and 8 percent for underground mines.

Conclusion

The problems mentioned above and others have prevented the current federal coal program from capturing a fair return for federal coal resources for decades. Undertaking a comprehensive review of the federal coal program for the first time since the 1980s is a positive step toward understanding and addressing those problems.