



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[21X.LLHQ320000.L13200000.PP0000]

### Notice of Intent to Conduct a Review of the Federal Coal Leasing Program and to Seek Public Comment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The Bureau of Land Management (BLM), Headquarters Office seeks public comment on the Federal coal program in advance of the BLM's intended review of that program. The Department of the Interior (DOI) also intends to conduct government-to-government consultation with affected Indian tribes about the Federal coal leasing program and to consider the potential environmental, social, and cultural impacts of the coal program on indigenous communities and their lands during this review.

This notice solicits public comments for consideration in establishing the scope and content of the BLM's review of the Federal coal leasing program.

**DATES:** The BLM invites interested agencies, States, American Indian tribes, local governments, industry, organizations, and members of the public to submit comments or suggestions to assist in identifying significant issues that the BLM should consider in its review of the Federal coal program.

The BLM will consider all written comments received or postmarked during the public comment period which will close on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit written comments by the following methods:

- Email: [BLM\\_HQ\\_320\\_CoalProgramReview@blm.gov](mailto:BLM_HQ_320_CoalProgramReview@blm.gov). This is the preferred method of commenting.

- Mail, personal, or messenger delivery: National Coal Program Review, In care of: Thomas Huebner, BLM Wyoming State Office, 5353 Yellowstone Rd, Cheyenne, WY 82009

**FOR FURTHER INFORMATION CONTACT:** Lindsey Curnutt, Chief, Division of Solid Minerals, email: [lcurnutt@blm.gov](mailto:lcurnutt@blm.gov), telephone: 480-708-7339. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339 to contact Ms. Curnutt. This service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** On January 15, 2016, Secretary of the Interior S.M.R. Jewell issued Order No. 3338 (Jewell Order), directing the BLM to conduct a broad, programmatic review of its Federal coal program through preparation of a Programmatic Environmental Impact Statement (PEIS) under the National Environmental Policy Act (NEPA). 42 U.S.C. 4321 *et seq.* The Jewell Order was issued in response to a range of concerns regarding the Federal coal program, including, in particular, concerns as to whether American taxpayers are receiving a fair return from the development of these publicly owned resources; concerns about fluctuating market conditions and attendant consequences for coal-dependent communities; and concerns about whether the leasing and production of large quantities of coal under the Federal coal program is consistent with the Nation's goals to reduce greenhouse gas emissions to mitigate climate change. The Jewell Order directed a pause on the issuance of new Federal leases for thermal (steam) coal, subject to certain enumerated exclusions, until completion of the PEIS.

On March 29, 2017, former Secretary Zinke issued Secretary's Order No. 3348 (Zinke Order) entitled, "Concerning the Federal Coal Moratorium." The Zinke Order rescinded the Jewell Order, lifted the coal leasing pause, and halted preparation of the PEIS.

On April 16, 2021, Secretary Haaland issued Secretary’s Order 3398, which rescinded the Zinke Order (Haaland Order). While the Haaland Order did not reinstitute the Jewell Order, it directed the Department to “review and revise as necessary all policies and instructions that implemented” the revoked Secretary’s Orders. This Federal Register Notice is intended to further the goals of the Haaland Order by beginning a new review of the Federal coal leasing program. The BLM has not approved a new coal lease sale since the Biden Administration took office.

## **Background**

### **A. Overview of Federal Coal Program**

Under the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. 181 *et seq.*, and the Mineral Leasing Act for Acquired Lands of 1947 (MLAAL), as amended, 30 U.S.C. 351 *et seq.*, the BLM is responsible for the leasing of Federal coal and regulation of the development of that coal on the approximately 700 million acres of mineral estate that is owned by the Federal Government. This responsibility includes Federal mineral rights on Federal lands and Federal mineral rights located under surface lands with non-Federal ownership. Other Departmental bureaus, particularly the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Office of Natural Resources Revenue (ONRR), also take actions related to coal mining on Federal lands. The OSMRE, and States that have obtained regulatory primacy under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), permit coal mining and reclamation activities, and monitor reclamation and reclamation bonding actions. The ONRR collects and audits all payments required under a Federal lease, including bonus bids, royalties, and rental payments, and distributes those funds, pursuant to statute, between the U.S. Treasury and the States where the coal resources are located, 30 U.S.C. 191(a).

#### 1. Federal Coal Leasing and Production

In recent years and on average, approximately 42 percent of the Nation's annual coal production came from Federal lands. Federal coal produced from the Powder River Basin in Montana and Wyoming accounts for over 85 percent of all Federal coal production.

As of Fiscal Year 2020, the BLM administered 287 coal leases, covering 437,039 acres in 11 States, with an estimated 7 billion tons of recoverable Federal coal. Over the last decade (2011-2020), the BLM sold 17 coal leases and managed leases that produced approximately 3.7 billion tons of coal and resulted in \$9.2 billion in revenue collections by the United States.

The U.S. Energy Information Administration (EIA) estimates total U.S. coal production in 2020 was about 534 million short tons (MMst), 24 percent lower than in 2019.<sup>1</sup>

EIA estimates that U.S. total annual coal imports reached a record high of about 36 million short tons in 2007. In 2020, the United States imported about 5 MMst of coal, which was equal to about 1 percent of U.S. coal consumption in 2020.<sup>2</sup>

## 2. Federal Coal Program

The current BLM coal leasing program includes land use planning, the processing of applications (e.g., applications for exploration licenses and lease sales), estimation of the value of proposed leases, lease sales, and post-leasing actions (e.g., production verification, lease and production inspection and enforcement, royalty reductions, and bond review).

The Federal Government receives revenue from coal leasing in three ways: (1) A bonus that is paid at the time the BLM issues a lease; (2) Rental fees; and (3) Production royalties. The royalty rates are set by regulation at a fixed 8 percent for underground mines and not less than 12.5 percent for surface mines. For coal leases outside of Alaska,

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<sup>1</sup> U.S. EIA, *Coal Data* (August 4, 2021) (<https://www.eia.gov/coal/data/browser/>).

<sup>2</sup> U.S. EIA, *Coal Data* (July 20, 2021) (<https://www.eia.gov/energyexplained/coal/imports-and-exports.php>).

Treasury pays approximately 50 percent of receipts to the State where the leased lands are located, 30 U.S.C. 191(a). For leases and mineral deposits in Alaska, Treasury pays 90 percent of the receipts to the State, 30 U.S.C. 191(a).<sup>3</sup> Federal coal development provides coal producing states like Wyoming, Montana, Utah, and Colorado with significant income and other economic benefits.

The BLM's planning process for Resource Management Plans, supported by environmental analysis under NEPA, identifies areas that are potentially available to be considered for coal leasing. The planning process considers, among other things, the impacts of a "reasonably foreseeable development scenario," but it does not directly authorize any coal leasing or determine which coal will be leased.

The Federal Coal Leasing Amendments Act of 1976 (FCLAA), which amended Section 2 of the Mineral Leasing Act of 1920, requires that, with limited exceptions, Federal lands available for coal leasing be sold by competitive bid, with the BLM receiving fair market value for the lease. While multiple bids are not required, all successful bids must equal or exceed the estimated pre-sale fair market value for the lease, as calculated by the BLM. Competitive leasing is not required for: (1) Preference right lease applications for owners of pre-FCLAA prospecting permits; and (2) Modifications of existing leases, where Congress has authorized the Secretary to allow up to 960 acres (increased from 160 acres by the Energy Policy Act of 2005) of contiguous lands for noncompetitive leasing by modifying an existing lease.

The BLM issued coal leasing regulations in 1979 that provided for two separate competitive coal leasing processes: (1) Regional leasing, where the BLM selects tracts within a region for competitive sale; and (2) Leasing by application, where an industry applicant nominates a particular tract of coal for competitive sale.

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<sup>3</sup> Payments to the States are "reduced by 2 percent for any administrative or other costs incurred by the United States," and "the amount of such reduction shall be deposited to miscellaneous receipts of the Treasury." 30 U.S.C. 191(b)

Regional coal leasing requires the BLM to select potential coal leasing tracts based on land use planning, expected coal demand, and potential environmental and economic impacts.<sup>4</sup> This process includes use of a Federal/State advisory board known as a Regional Coal Team<sup>5</sup> to provide input on leasing decisions. The regional leasing system has not been used since 1990, and currently all BLM coal leasing relies on applications.<sup>6</sup> Leasing by application begins with an application to lease a tract of coal identified by the applicant.<sup>7</sup> The BLM reviews the application for completeness to ensure that it conforms to existing land use plans and to ensure that it contains sufficient geologic data to determine the fair market value of the coal. The agency then prepares an analysis under NEPA (either an Environmental Assessment or an EIS) and seeks public comment on the proposed lease sale. Through this process, the BLM evaluates alternative tract configurations to maximize competitiveness and value, and to avoid bypassing Federal coal. The BLM also consults with other appropriate Federal and State agencies and Tribal governments, and the BLM determines whether the surface manager consents to leasing in situations where the surface is not administered by the BLM. Preparations for the actual lease sale begin with the BLM formulating, after obtaining public comment, a pre-sale estimate of the fair market value of the coal. This estimate is confidential and is used to evaluate the bids for the lease “bonus” received during the sale. Sealed bids are accepted prior to the date of the sale and are publicly announced during the sale. The winning bid is the highest bid that meets or exceeds the coal tract’s

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<sup>4</sup> 43 CFR part 3420.

<sup>5</sup> The BLM regulations require a Regional Coal Team to be established for each coal production region, comprised of representatives from the BLM and the Governors of each State in the region. The Regional Coal Teams are to guide the coal planning process for each coal production region, serve as the forum for BLM and State consultation, and make recommendations on coal leasing levels. 43 CFR 3400.4.

<sup>6</sup> While the Powder River Basin (PRB) coal production region was decertified in 1992, the PRB regional coal team is still in place and meets periodically to review regional activity and make recommendations on coal leasing in the region.

<sup>7</sup> See 43 CFR subpart 3425.

presale estimated fair market value from an applicant that meets all eligibility requirements and has paid the appropriate fees and payments.

There are two separate bonding requirements for Federal coal leases. The BLM requires a bond adequate to ensure compliance with the terms and conditions of the lease that must cover a portion of potential liabilities associated with the bonus bid, rental fees, and royalties. In addition, under SMCRA, the OSMRE or the State with regulatory primacy requires sufficient bonding to cover anticipated reclamation costs.

A Federal coal lease has an initial term of 20 years, but it may be terminated after 10 years if the coal resources are not diligently developed, 30 U.S.C. 207. Existing leases that have met their diligence requirements may be renewed for additional 10-year terms following the initial 20-year term.

### 3. Previous Comprehensive Reviews

The Department has previously conducted two separate, comprehensive reviews of the Federal coal program. In the late 1960s, there were serious concerns about speculation in the coal leasing program. A BLM study discovered a sharp increase in the total Federal acreage under lease and a consistent decline in coal production. In response, the Department undertook the development of a planning system to determine the size, timing, and location of future coal leases, and the preparation of a PEIS for the entire Federal coal leasing program. Beginning in February 1973, the Department instituted a complete moratorium on the issuance of new coal prospecting permits, and a moratorium with limited exceptions on the issuance of new Federal coal leases: new leases were issued only to maintain existing mines or to supply reserves for production, where “near future” meant that development and production were to commence within 3 and 5 years, respectively. The moratorium was scaled back over time, but was not completely lifted until 1981, after the PEIS had been completed, a new leasing system had been adopted through regulation, and litigation was resolved.

In 1982, concerns about the Federal coal program arose again, this time related to allegations that the Government did not receive fair market value from a large lease sale in the Powder River Basin under the new procedures adopted as part of the programmatic review in the 1970s. Among other reports on the issue, the Government Accountability Office (GAO) issued a report in May 1983 concluding that the Department had received roughly \$100 million less than it should have for the sale. In response, in July 1983, Congress directed the Secretary to appoint members to a commission, known as the Linowes Commission, to investigate fair market value policies for Federal coal leasing. Congress also, in the 1984 Appropriations Act, directed the Office of Technology Assessment (OTA) to study whether the Department's coal leasing program was compatible with the nationally mandated environmental protection goals.

As part of the 1984 Appropriations Bill, Congress imposed a moratorium on the sale or lease of coal on public lands, subject to certain exceptions, starting in 1983 and ending 90 days after publication of the Linowes Commission's report. The Linowes Commission published the *Report of the Commission on Fair Market Value Policy for Federal Coal Leasing* in February 1984. The OTA report, *Environmental Protection in the Federal Coal Leasing Program*, was released in May 1984. The principal message of these reports was that the Department should: (1) temper its pace of coal leasing; (2) improve and better document its procedures for receiving fair market value; and (3) take care to balance competing resource uses in making lease decisions.

Secretary of the Interior William P. Clark extended the suspension of coal leasing (with exceptions for emergency leasing and processing preference right lease applications, among others) while the Department completed its comprehensive review of the program. This review included proposed modifications to be made by the Department in response to the Linowes Commission and OTA reports. Secretary Clark announced on August 30, 1984, that the Department would prepare an EIS supplement to the 1979 Programmatic



EIS for the Federal coal management program. The Department issued the Record of Decision for the Programmatic EIS supplement in January 1986, in the form of a Secretarial Issue Document. That document recommended continuation of the leasing program with modifications. In conjunction with those modifications, Secretary of the Interior Donald Hodel lifted the coal leasing moratorium in 1987.

On March 17, 2015, Secretary S.M.R. Jewell called for “an honest and open conversation about modernizing the Federal coal program.” As described above, the last time the Federal coal program underwent comprehensive review was in the mid-1980s, and market conditions, infrastructure development, scientific understanding, and national priorities have changed considerably since that time. The Secretary’s call also responded to continued concerns from numerous stakeholders about the Federal coal program, including concerns raised by the GAO,<sup>8</sup> the Department’s Office of Inspector General (OIG),<sup>9</sup> members of Congress, interested stakeholders, and the public. The concerns raised by the GAO and OIG were centered on whether taxpayers receive a fair return from the sale of federal coal. Others raised concerns that the current Federal leasing structure lacks transparency and competition and is therefore not ensuring that the American taxpayer receives a fair return from Federal coal resources, while also raising questions regarding current market conditions for the coal industry and related implications for Federal resources. Stakeholders also questioned whether the leasing program results in over-supply of a commodity that has significant environmental and health impacts, including impacts on global climate change.

In response to the Secretary’s call for a conversation to address these concerns, the BLM held five listening sessions regarding the Federal coal program in the summer of 2015.

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<sup>8</sup> GAO, *Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information*, GAO 14-140 (Dec. 2013).

<sup>9</sup> OIG, *Coal Management Program, U.S. Department of the Interior*, Report No.: CR-EV-BLM-0001-2012 (June 2013).

Sessions were held in Washington, D.C.; Billings, Montana; Gillette, Wyoming; Denver, Colorado; and Farmington, New Mexico. The Department heard from 289 individuals during the sessions and received more than 92,000 written comments before the comment period closed on September 17, 2015. The oral and written comments reflected several recurring themes:

- Concern about global climate change and the impact of coal production and use.
- Concern about the loss of jobs and local revenues if coal production is reduced.
- Support for increased transparency and public participation in leasing and royalty decisions and concern that the structure of the leasing program does not provide for adequate competition or a fair return to the taxpayer for the use of Federal resources.
- Support for increasing coal royalty rates because: (1) taxpayers are not receiving a fair return, in part because the royalty rate should match that for offshore oil and gas leases; and (2) the royalty rate should account for the environmental costs of coal production..
- Support for maintaining or lowering coal royalty rates because: (1) the coal industry already pays more than its fair share and existing Federal rates are too high given current market conditions; (2) raising rates will lower production and revenues; and (3) raising rates will cost jobs and harm communities.
- Support for streamlining the current leasing process, so that the Federal coal program is administered in a way that better promotes economic stability and jobs, especially in coal communities which are already suffering from depressed economic conditions.

After conducting these listening sessions, Secretary Jewell determined that three areas of the program received the most attention from the public: concerns that American taxpayers were not receiving a fair return on public coal resources, that the program

conflicted with national climate policy and goals, and that the structure of the program needed review considering current market conditions. To address the issues raised during these sessions, on January 15, 2016, Secretary Jewell issued Secretary's Order 3338, directing the BLM to conduct a broad, programmatic review of the Federal coal program through the preparation of a discretionary Programmatic EIS under NEPA, 42 U.S.C. 4321 *et seq.* A Notice of Intent for the Programmatic EIS was published in March 2016, and a scoping report was published on January 11, 2017.

On March 29, 2017, former Secretary Zinke issued Secretary's Order No. 3348 (Zinke Order) entitled, "Concerning the Federal Coal Moratorium." The Zinke Order rescinded the Jewell Order, lifted the coal leasing pause, and halted the preparation of the Programmatic EIS.

On January 20, 2021, President Biden issued Executive Order 13990, "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." On April 16, 2021, Secretary Deb Haaland issued Secretary's Order 3398, which rescinded the Zinke Order. The Department's programmatic review of the Federal coal program furthers the goals of the Haaland Order.

In announcing this review and soliciting comments, the Department notes that the regional leasing program authorized in the 1979 regulations has not worked as envisioned and, instead, the BLM has conducted leasing only in response to industry applications. Given previous concerns about the lack of competition in the lease-by-application system, as well as consideration of the Biden Administration's environmental goals, the BLM is beginning a new review of the Federal coal leasing program and seeks comments on whether the current regulatory framework should be changed to provide better mechanisms to decide which coal resources should be made available and how the leasing process should work, including when and where to lease. The BLM is also seeking comments on the following topics:

**a. Fair Return.**

The BLM is seeking comments on whether the bonus bids, rents, and royalties received under the Federal coal program are successfully securing a fair return to the American public for Federal coal, and, if not, what adjustments could be made to provide such compensation.

**b. Climate Impacts.**

The BLM seeks comments on how best to measure and assess the climate impacts of continued Federal coal production, transportation, and combustion.

**c. Other Impacts.**

The BLM seeks comments on other potential impacts on public health and the environment, such as the effects of coal production on: The quantity and quality of water resources, including aquifer drawdown and impacts on streams and alluvial valley floors; air quality and the associated effects on health and visibility; wildlife, including endangered species; and other land uses such as grazing and recreation.

**d. Socio-Economic Considerations.**

The BLM seeks comments on whether the current Federal coal leasing program adequately accounts for externalities related to Federal coal production, including environmental and social impacts.

**e. Exports.**

The BLM seeks comments addressing whether and, if so, how leasing decisions should consider actual and/or projected exports of domestic coal collectively or from any given tract and potential mechanisms that could be used to appropriately evaluate export potential.

**f. Energy Needs.** Finally, the BLM seeks comments on how Federal coal supports fulfilling the energy needs of the United States.

The BLM also welcomes suggestions for other potential approaches to the Federal coal program including approaches that may differ from those articulated below. We encourage commenters to be as specific as possible in identifying the types of changes to the program that the BLM should consider, including changes to regulations, guidance, and management practices.

BLM also solicits input on the following:

1. Potential new leasing models, or potential reforms to the previous or existing leasing models of regional leasing and lease by application;
2. Other approaches to increase competition in the leasing process;
3. Data or analyses that justify a specific change to the royalty rate;
4. Potential approaches to improve the pre-sale estimate of fair market value;
5. Whether, and how, to account in the leasing process for the extent to which reclamation responsibilities have been met;
6. Potential approaches to design a “budget” for the amount of Federal coal and/or acreage to be leased over a given period; and
7. How to account for export potential in the leasing process.

In submitting written comments, individuals should be aware that their entire comment—including personal identifying information (including address, phone number, and email address)—may be made publicly available at any time. While the commenter can request in the comment that the commenter’s personal identifying information be withheld from public review, this cannot be guaranteed. All comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

The DOI will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given

due consideration. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the Federal coal program, are invited to participate in the review.

Following closure of the comment period, the BLM will prepare a comment summary report, make the report available to the public, and will detail the scope and form of its programmatic review. The BLM's goal is to announce additional steps for the programmatic review by November 2021.

(Authority: 43 U.S.C. 1701 *et seq.*, 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351 *et seq.*)

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