(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3470

[WO–320–1430–PB–24 1A]

RIN 1004–AD43

Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule corrects a technical error relating to coal lease modifications made in a 1999 final rule. It also amends the regulations to reflect the statutory increase in the maximum acreage of Federal leases for coal that an individual or entity may hold in any one state and nationally.

EFFECTIVE DATE: November 14, 2002.

ADDRESSES: You may send inquiries or suggestions to Director (320), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153. We will maintain the administrative record for this rule at the Bureau of Land Management, Regulatory Affairs Group (630), Room 401, 1620 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Background

A. Lease Modifications

This rule amends the regulations of the Bureau of Land Management (BLM) to reflect correction of a technical error regarding the requirement of a public hearing and publication in the **Federal Register** and a general circulation newspaper of a notice of availability of environmental analysis documents for coal lease modifications. This error was made in conjunction with the BLM's September 1999 regulatory revisions incorporating public participation procedures into the competitive coal leasing regulations. For a detailed discussion of how the error occurred and its effects, see the proposed rule published January 18, 2002 (67 FR 2618).

B. Acreage Limitation

This final rule also changes the regulations on coal lease acreage limitations to conform them to a recent statutory change. On October 23, 2000, the United States Senate passed S. 2300, which became Public Law 106–463 on November 7, 2000. This law, known as the Coal Competition Act of 2000, amended Section 27(a) of the Mineral Leasing Act (30 U.S.C. 184(a)) to increase the amount of acreage of Federal coal leases, or permits that an individual or entity may hold in a single state from 46,080 acres to 75,000 acres and raised the national acreage limit from 100,000 acres to 150,000 acres. This final rule changes the acreage limitations in the regulations to conform to those in the statute. For a complete discussion of the reasons for the statutory changes and their effects, see the preamble of the proposed rule (67 FR 2618).

II. Discussion of Comments

Three letters, one from a law firm and two from state government agencies, addressed the proposed rule. All of the comment writers either supported the proposed rule generally or stated that they had no comment on it.

III. Discussion of the Rule

In light of the lack of substantive comments suggesting changes in the regulations, we are publishing the rule as it was proposed in the correction and extension document published April 12, 2002 (67 FR 17962), without change. That document corrected a drafting error in the original proposed rule published on January 18, 2002 (67 FR 2618).

IV. Procedural Matters

National Environmental Policy Act

BLM prepared an environmental assessment (EA) and found that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed fully in the proposed rule, this rule implements a technical correction to the public participation rule completed on September 28, 1999 (64 FR 52239) and a change to the Mineral Leasing Act which was made by Congress. The Mineral Leasing Act amendment changed the acreage limitations for coal leases. As stated in the EA, the final rule should lead to more efficient production and economic recovery of the coal resource. However, it should not in and of itself lead to new mining. While more efficient mining may have environmental consequences, BLM will consider these consequences on a case-by-case basis in preparing environmental analyses before issuing a new coal lease or modifying an existing one. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have an annual effect of $100 million or more on the economy. The rule affects coal leasing in only two ways: shortening the lease modification procedure, and increasing lease acreage limitations.

Further, historically, lease modifications have not had significant economic effects on the economy. In Fiscal Year 2001, there were 317 coal leases of various kinds, generating royalties of $337,750,444 on production of 393,509,351 tons of Federal coal, with an average market value of $7.85 per ton, from 473,303 acres of public lands. Of these leases, in FY 2001, only 2 leases were subjects of lease modification. Since a lessee can only add maximum of 160 acres by lease modification over the entire term of the lease, it is clear that the economic effect of lease modifications is tiny compared with the coal program as a whole. The largest number of lease modifications that BLM has processed in the past few years has been 6, in FY 1998, affecting a total of 733 acres. Analyzing this strictly from averages, and using the value from FY 2001, the market value of coal affected by these modifications should have been about $4,784,701 in FY 1998, assuming, of course, that it all would have been immediately available for mining in that year. Total value for other recent years, based on the lower numbers and acreages of lease modifications shown in the accompanying chart, should have been only a fraction of this value. The following table summarizes lease modifications over the past few years.

BLM COAL LEASE MODIFICATIONS, FY1997–FY2001

State	FY1997		FY1998		FY1999		FY2000		FY2001	
	Lease Mods	Acres	Lease Mods	Acres	Lease Mods	Acres	Lease Mods	Acres	Lease Mods	Acres
Colorado	1	100	1	160			2	288		
Kentucky									1	160
Montana			3	303	1	10				
Utah	1	133	2	240	2	200			1	122
*Total	2	233	6	703	3	210	2	288	2	282

Of course, since we do not know precisely how much coal was produced from the lease modifications shown, we state the 1998 dollar figures only to provide a sense of how small the effect of lease modifications is, compared with the threshold in the executive order. Further, the effects of the mistake that we are correcting in this rule were—

- Somewhat longer time for processing a lease modification,
- Somewhat higher cost for processing a lease modification.

(Neither of these effects was required by law or policy; rather, they were solely a consequence of the drafting error.) Therefore, the effects of this final rule amount to a financial benefit to the coal industry and BLM due to reducing the time required for lease modifications and the administrative cost of processing them.

The reduced costs to BLM and the lease modification applicant from avoiding a 2 to 3 month delay to allow the public participation inadvertently required by the 1999 rule are difficult to segregate and quantify. As a minimum, we estimate the savings in processing costs (for **Federal Register** processing and document preparation) will approach $10,000 per lease modification application. Assuming an average number of lease modification applications per year of 3, the total savings may be nearly $30,000.

The other element of savings created by this final rule is the reduction in opportunity costs. The unintended consequence of the 1999 rule was that some operators may not have been able to develop the resources contained in the lease modifications in a timely manner, or at all. Those costs would have been imposed if, due to the additional processing time, BLM could not approve the lease modification in time to allow recovery of the resources. If the lease modification is not processed in time for the coal it contains to be mined with the rest of the coal in the lease, the public will lose revenues from bonus payments and royalties. We estimate that this final rule will enable the public to avoid bonus and royalty revenue losses of about $2,200 per acre on average, and with an expected 3 modifications at a maximum of 160 acres each, the total revenue impact is about $1,056,000 per year, which, though substantial, is less than 1 percent of the total coal royalty revenues for FY 2001, and far less than the $100 million annual threshold in the Executive Order.

The second change amends our regulations to reflect acreage limitations changed by Public Law 106–463. We cannot quantify the economic impact of increasing the acreage limitations, because it would involve what would amount to speculation about future coal leases or mergers of current coal lessees. We do, however, see this as positive for industry in that it will allow greater flexibility for coal operators to maintain coal reserves that are readily available for production and consumption. Currently, to allow for proof of successful reclamation, lessees must wait as long as 10 years before they can relinquish a lease after production has ended. The acreage in a lease that has been mined out but not reclaimed counts the same to the state and national acreage limitations as a new lease that has never been mined.

The rule will not—

- Adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. It will enhance economic recovery of coal, minimize bypasses, and improve mining efficiency.
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
- Alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients.
- Raise novel legal or policy issues.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule, as described above, merely implements a statutory change to the regulations that apply to leasing Federal coal resources, and the rule change itself will not have a significant impact on any small entities. Rather, it is the legislation which affects these entities. The regulations make no substantive change beyond what Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully analyzed for RFA compliance when published. Therefore, BLM has determined under the RFA that this final rule does not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). This rule merely makes a technical correction in the final rule published on September 28, 1999 (64 FR 52239), and implements a change to the state acreage limits that has been made by Congress. This rule is limited to making BLM's regulations consistent with the law.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor will the rule have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule merely changes BLM's coal leasing regulations regarding acreage limitations to comply with Public Law 106–463 and makes a technical correction to the coal leasing regulations regarding lease modifications. Therefore, BLM is not required to prepare a statement

containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

This rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule is limited to changes reflecting Congress's amendment raising the state and nationwide acreage limits for coal leases, and correcting a technical error relating to regulations governing coal lease modifications. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule is limited to changes to reflect Congress's amendment raising the acreage limits for coal leases and to correct a technical error pertaining to coal lease modifications. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule should have a favorable effect on energy production. It should improve efficiency in production by increasing acreage limitations and by removing procedural requirements inadvertently and erroneously applied to lease modifications in an earlier rule.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. Since this rule does not make significant changes to BLM policy and does not specifically involve Indian reservation lands, we have determined that the government-to-government relationships should remain unaffected.

Principal Author

The principal author of this rule is Mary Linda Ponticelli of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects

43 CFR Part 3430

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: September 26, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM amends Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

PART 3430—NONCOMPETITIVE LEASES

1. The authority citation for part 3430 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351—359; 30 U.S.C. 521—531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

Subpart 3432—Lease Modifications

2. Amend § 3432.3 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3432.3 Terms and conditions.

* * * * *

(c) Before modifying a lease, BLM will prepare an environmental assessment or environmental impact statement covering the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(d) For coal lease modification applications involving lands in the National Forest System, BLM will submit the lease modification application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment, for the attachment of appropriate lease stipulations, and for making any other findings prerequisite to lease issuance.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

3. The authority citation for part 3470 continues to read as follows:

Authority: 30 U.S.C. 189 and 359 and 43 U.S.C. 1733 and 1740.

Subpart 3472—Lease Qualification Requirements

§ 3472.1–3 [Amended]

4. Amend § 3472.1–3 by—

a. removing from paragraph (a)(1) the terms ''46,080 acres'' and ''100,000 acres'', and adding in their place the terms ''75,000 acres'' and ''150,000 acres'', respectively; and

b. removing from the first sentence of paragraph (a)(2) the date ''August 4, 1976,'' and adding in its place the date ''November 7, 2000,'' and removing from each place it appears in paragraph (a)(2) the term ''100,000 acres'' and adding in its place the term ''150,000 acres''.

[FR Doc. 02–26064 Filed 10–11–02; 8:45 am]

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