

Q&A
Department of the Interior Federal Coal Reforms

OVERALL

What actions are being taken today?

U.S. Secretary of the Interior Sally Jewell announced several actions to strengthen and improve the federal coal program that is managed on behalf of all Americans. There are three main components that the Interior Department is announcing:

- 1) A formal, comprehensive review of the federal coal program that will identify and evaluate potential reforms;
- 2) A pause on new coal leasing on public lands while the review is underway; and
- 3) A series of good government reforms to improve transparency and program administration, including establishing a public database to account for the carbon emissions from fossil fuels on public lands.

Why are you taking these actions?

The federal government has a responsibility to all Americans to ensure that the coal resources it manages are administered in a responsible way to help meet our energy needs and that taxpayers receive a fair return for the sale of these public resources. And yet, over the past few years, it has become clear that many of the decades-old regulations and procedures that govern the federal coal program are outdated and do not fully reflect the realities of today's economy or current understanding of environmental and public health impacts from coal production.

In March 2015, Secretary of the Interior Sally Jewell called for an “open and honest conversation about modernizing the federal coal program,” and she launched a series of listening sessions across the country to hear from the public on complex questions, including: Are taxpayers and local communities getting a fair return from these resources? How can we make coal leasing more transparent and more competitive? How do we manage the program in a way that is consistent with our climate change objectives?

As a direct result of these public listening sessions – as well as concerns raised by the Government Accountability Office, the Interior Department's Inspector General, and Members of Congress – Secretary Jewell is taking the next step in the conversation by launching a formal, comprehensive review of the federal coal program. While the review is underway, consistent with practices during previous programmatic reviews of the federal coal program, Secretary Jewell has ordered a pause on significant new coal leasing decisions on public lands so that those decisions and leases can incorporate lessons learned from the comprehensive review to ensure that taxpayers receive a fair return for the sale of these public resources.

How did the public help shape this path forward?

Over the summer of 2015, the Interior Department hosted five listening sessions across the country (Washington, D.C.; Billings, Montana; Gillette, Wyoming; Denver, Colorado; and Farmington, New Mexico). Over the course of the public comment period, the Interior

Department heard from hundreds of individuals and received over 90,000 written comments that represented a wide variety of views. The Interior Department carefully reviewed the public feedback before crafting a path forward.

What concerns have the GAO, IG and Members of Congress raised?

In June 2013, the Interior Department's Office of Inspector General issued a report ([*Coal Management Program, U.S. Department of the Interior*](#)) that found weaknesses in the sale process and deficiencies in inspection and enforcement. In December 2013, the Government Accountability Office issued a [report](#) that found the Bureau of Land Management (BLM) could improve its coal leasing program by enhancing the appraisal process, more explicitly considering coal exports, and providing more public information. Over the years, Members of Congress have raised a variety of concerns with the program, including the environmental impacts, and the lack of competitiveness, transparency, and accounting for full costs of carbon.

Has the Interior Department undertaken any steps to address these concerns?

Yes, several. In January 2015, Interior's Office of Natural Resources Revenue published a proposed rule governing the valuation of federal oil and gas, and federal and American Indian coal resources. The proposed rule would modernize existing valuation regulations, which were put in place for natural gas and coal in the late 1980s, and ensure that the valuation process better reflects the changing energy industry while protecting taxpayers and American Indian assets. A final rule will be issued in 2016.

In December 2014, the BLM announced a series of actions aimed at addressing criticisms that its process to determine fair market value at the leasing stage is insufficient and fails to adequately account for higher prices received overseas. The BLM revised its manual and handbooks for the coal program to increase clarity regarding how the agency determines fair market value, provide guidance on independent review of appraisal reports, and make improvements that will enable the BLM to account for export potential through analysis of comparable sales and income. The BLM has also released safety, inspection and enforcement guidance to promote more responsible development of coal resources on the nation's public lands, regarding: improved documentation for coal operation inspections on coal exploration licenses, licenses to mine, leases, and logical mining units; and increased Mineral Mine Inspector training and certification requirements.

In addition, Interior's Office of Surface Mining Reclamation and Enforcement has proposed the Stream Protection Rule, under the Surface Mining Control and Reclamation Act (SMCRA), which would modernize 30-year old rules to better protect communities from the adverse effects of coal mining, and provide greater certainty to the mining industry about what constitutes harm to certain water bodies during mining activities.

COMPREHENSIVE REVIEW OF COAL PROGRAM

What is a PEIS?

A Programmatic Environmental Impact Statement (PEIS) is a formal, comprehensive review, with opportunity for extensive public engagement which evaluates the effects of broad proposals or program-level decisions. In this case, the Interior Department will use the PEIS process to

help identify and evaluate potential reforms to the federal coal program. The PEIS process will be completed consistent with the National Environmental Policy Act. The process is being undertaken as a discretionary action.

What will the PEIS evaluate?

The review will take a careful look at issues related to the BLM's administration of the federal coal program, including:

- The appropriate leasing mechanisms for how, when and where to lease;
- How to account for the environmental and public health impacts of the federal coal program; and
- How to ensure the sale of these public resources results in a fair return to the American taxpayers, including whether current royalty rates should be adjusted.

The review will also explore whether U.S. coal exports should factor into leasing or other program decisions; how the management, availability and pricing of federal coal impacts domestic and foreign markets and energy portfolios; and the role of federal coal in fulfilling the energy needs of the United States.

What are the next steps?

The review will include extensive opportunities for public participation. The PEIS will kick off with public meetings in early 2016 to help determine the precise scope of the review. The Interior Department will release an interim report by the end of 2016 with conclusions from the scoping process about alternatives that will be evaluated and, as appropriate, any initial analytical results. The scoping period will help inform the development of a draft PEIS, which the BLM will issue for public review and comment. Informed by comments on the draft PEIS, the BLM will then issue a Final PEIS. Changes to the coal leasing program may be implemented through a Record of Decision or separate processes.

How can I get involved?

Members of the public and stakeholders are encouraged to participate at all stages of the process, including in the public scoping meetings in 2016. There will also be multiple opportunities to submit written comments throughout the process.

How long will the PEIS take?

A PEIS typically takes several years to complete, providing adequate time for public comment and review at each stage of the process. It is expected that the review will take approximately three years to complete.

Have programmatic reviews of the federal coal program been done before?

Yes – although a programmatic review of the coal program has not been completed in more than 30 years. In 1983 and 1984, Congress established a commission to investigate fair market value policies for coal leasing and required a study of whether the coal leasing program was compatible with national environmental protection goals. The Interior Department followed these reports with a supplemental PEIS on the federal coal program, completed in 1986.

Previously, in 1973, President Nixon's Interior Department launched a PEIS in response to serious concerns about speculation in the coal leasing program, which was completed in 1979. Both programmatic reviews were accompanied by similar pauses in new coal leasing decisions.

PAUSE ON NEW COAL LEASING

Why is the Secretary instituting a pause on new coal leasing?

Given the serious concerns raised about the federal coal program and the large reserves of undeveloped coal already under lease to coal companies, it would not be responsible to continue to issue new leases under outdated rules and processes. While the review is underway, and consistent with the practice during two previous programmatic reviews, the Interior Department is instituting a pause on new coal leasing on public lands so that those leasing decisions can benefit from the recommendations that come out of the review.

What does the pause cover? Will there be exceptions?

During the pause, the BLM will not hold lease sales or process new lease applications for surface and underground coal. Importantly, the pause does not apply to existing leases and coal production activities.

There will be limited, commonsense exemptions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency leasing as defined by the BLM's current regulations, such as mines where there is a demonstrated safety need or insufficient reserves. Preparatory work on already-pending applications may continue, including NEPA analysis, but the BLM will not make final decisions on new leases, absent an applicable exemption. Pending leases that have already completed NEPA analysis and received a final Record of Decision or Decision Order by a federal agency under the existing regulations will be allowed to complete the final procedural steps to secure a lease or lease modification, including those that are undergoing re-evaluation after having been vacated by judicial decision. The pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining, or Office of Natural Resources Revenue actions related to the federal coal program, such as mine plan approvals. The pause does not apply to coal leases on tribal or allotted lands.

What is an "emergency" that would allow leasing under the exceptions?

The coal leasing regulations at 43 CFR 3425.1-4 allow for an emergency lease sale where the coal is needed within 3 years to maintain production, or where the coal would be bypassed if not leased.

More specifically, the regulations outline two situations in which emergency leasing is allowed. In the first situation, the Federal coal is needed within 3 years either to maintain the mine at its current average annual production levels, or to supply coal for contracts signed prior to July 19, 1979. In the second situation, if the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future, and at least some of the tract applied for would be used within 3 years.

In both cases, the applicant for emergency leasing must also show that the need for the coal

resulted from circumstances that were either beyond the control of the applicant or could not have been reasonably foreseen and planned for in time to allow for the normal leasing process. Leases issued under the emergency provision are limited to 8 years of recoverable reserves at the mine's current rate of production.

Will the pause impact current coal production?

The Interior Department does not anticipate that the pause will significantly alter current production. Under the pause, companies may continue to mine the large reserves of undeveloped coal already under lease.

Based on current production levels, coal companies now have approximately 20 years of recoverable coal reserves under lease on federal lands. This estimate may be conservative as Energy Information Administration analyses and other market trends show continuing declines in demand for coal. Many current lease applications with the BLM are on hold at the companies' request due to reductions in market demand for coal.

Given the abundance of coal reserves under lease, the declining demand for coal, and the accommodations that will be made for emergency circumstances, the pause should have no material impact on the nation's ability to meet its power generation needs.

Is there precedent for such actions?

Yes. In 1973, President Nixon's Interior Secretary Morton suspended coal leasing – including a complete moratorium on the issuance of new prospecting permits, and a prohibition on the issuance of new federal coal leases except in very limited circumstances. The moratorium was lifted in 1981, after a PEIS had been completed, a new leasing system had been adopted, and litigation resolved. In 1984, as part of the 1984 Appropriations Bill, Congress imposed a moratorium on the sale of coal lease tracts starting in 1983 and ending 90 days after publication of the Linowes Commission's report. The Congressional moratorium was set to expire in May 1984, but President Reagan's Interior Secretary Clark continued the moratorium, which continued the suspension of all coal leasing (except for emergency leasing, lease modifications and processing preference right lease applications) while Interior completed its comprehensive review of the program. The leasing moratorium was lifted in 1987.

Does the pause impact existing leases? Coal on tribal lands? Forest Service lands? State or private lands?

The pause does not apply to production on existing leases. The pause only applies to the Federal mineral estate administered by the BLM (regardless of whether the BLM also controls the surface estate), and it does not apply to coal leases on Tribal or allotted lands, which are administered under a different regulatory system. The pause only applies to lease sales and modifications; it does not apply to other BLM actions related to the Federal coal program, including the processing and issuance of coal exploration licenses, the issuance of renewal leases when required by the terms of existing leases, and the development and implementation of resource management plans. Similarly, the pause does not apply to actions undertaken by ONRR, OSMRE, or any other agency, office, or bureau with duties related to the development, production, or reclamation of Federal coal resources. Preparatory work on already-pending

applications may continue, including NEPA analysis, but the BLM will not make final decisions on leases until the review is completed, absent an applicable exemption.

How long will the pause last?

The Secretarial Order calls for the limitations on the issuance of federal coal leases to be applied until the completion of the PEIS. A PEIS typically takes several years to complete, providing adequate time for public comment and review at each stage of the process. It is expected that the review will take approximately three years to complete.

What impact will this pause have on the coal economy? Will this raise electricity rates?

Given the abundance of coal reserves under lease, the declining demand for coal, and the accommodations that will be made for emergency circumstances, the pause should have no material impact on the nation's ability to meet its power generation needs and is not expected to impact electricity production or prices.

What authority does the Secretary have to take this action?

The Secretary has authority under the Mineral Leasing Act, the Mineral Leasing Act for Acquired Lands, and the Federal Land Policy and Management Act to manage federal coal leasing. She has the authority under National Environmental Policy Act to utilize the PEIS process as part of a programmatic review of the federal coal program.

IMPROVING TRANSPARENCY and MEASURING CARBON EMISSIONS ON PUBLIC LANDS

Why are you establishing a database on carbon emissions?

This year the Interior Department's U.S. Geological Survey will complete a national inventory of carbon that is sequestered (stored) in the lands of the United States. Currently, however, there is no dedicated, official measure of the harmful greenhouse gas emissions from coal, oil and gas produced on public lands. An analysis from a non-governmental organization suggests that the emissions from these activities on public lands could amount to 28 percent of the nation's annual total energy-related fossil fuel emissions.

In order to better understand and manage carbon stocks on public lands, the USGS will establish a baseline and public database that accounts for carbon emitted from fossil fuels produced on public lands. Improved, timely and transparent accounting by one of the world's premier Earth science agencies will provide critical information for the public and federal land managers as we work to reduce carbon pollution from fossil fuel activities.

What will be measured?

The USGS will assess for the carbon stored and sequestered on public lands, and the quantities of greenhouse gases emitted from activities on public lands, including potential downstream emissions from fossil fuels.

The publicly available database will include:

- Baseline carbon stocks and sequestration rates;

- Other baseline data products such as habitats, ecosystems, soil conditions, protected status, land use and change, to facilitate analysis of environmental impacts and management policy options;
- Annually updated major land use and land cover change areas (e.g. wildfire, loss of wetlands, new acquisitions) and associated carbon emissions and uptakes;
- Annually updated net ecosystem carbon flux (i.e. sink or source);
- Annual estimates of greenhouse gas emissions resulting from energy development activities;
- Annual quantities of oil and gas extractions from federally managed lands; and
- Potential downstream greenhouse gas emissions associated with oil and gas extraction on federally managed lands.

Who will be involved in the initiative?

The USGS will be the lead agency in developing the database. The database would link to existing data from other government sources, such as the Environmental Protection Agency and the Energy Information Administration.

The accounting methodology will rely on ongoing USGS research and completion of the LCMAP (land change monitoring, assessment, and projection) project, which is expected to provide annual updates of land use/land cover change by 2018. It is also dependent on the development and operational use of the LUCAS (land use and carbon scenario simulator) model to track annual carbon fluxes as a result of land use change.

What are the next steps?

The USGS will first complete its pilot studies of carbon emissions and sequestration on federal lands and other requisite inputs to the LUCAS model. The database of carbon emissions and storage on federal lands would be established in 2018.

Why is the BLM issuing guidance that requires State and field offices to post online each pending request to lease coal or to reduce royalties? When will this go into effect?

Although much of this information is already available online, stakeholders have raised concerns that there is no formal guidance on the matter and not all BLM State and field offices currently post notice of these types of requests in a consistent manner or in real time. The BLM is committed to transparency and providing the public access to the information they need to understand how we are managing public resources, consistent with protections for confidential business information. Updating our guidance to ensure uniform, clear and consistent procedures for posting notice of all coal leasing and royalty rate reduction requests online is simply good government. We anticipate issuing guidance on this matter in the near term.

Why is the BLM conditioning any exchange or sale of federal coal to another owner on the requirement that the new owner obtain surface owner consent to leasing? When will this go into effect?

One of the concerns raised by stakeholders and Members of Congress during the listening sessions was about the potential effect of federal coal exchanges or sales on surface owners.

Owners of surface lands above federal coal deposits must consent to leasing of the federal minerals before the BLM will approve the lease sale. This ensures that a rancher, for example, doesn't unwillingly lose all use of their land for 10 or 20 years during a mining operation and before the land is reclaimed. However, when the federal coal is transferred to another owner through an exchange or sale, currently, the surface owner consent to leasing is no longer required. The BLM recognizes the impact of these situations on surface owners and will issue guidance directing that in situations where the BLM has the discretion to make the sale or exchange, the BLM will condition any such sale or exchange on the new owner obtaining surface owner consent prior to development of the coal. The BLM is working to develop this guidance and expects to issue it in the near term.

Why is the BLM directing new and readjusted leases to authorize the coal lessee to capture and sell methane, provided it does not conflict with pre-existing oil and gas lease interests? When will this go into effect?

At underground coal mining operations, the natural gas that is commonly present must be removed from the mine for miner safety. Natural gas is largely comprised of methane, a greenhouse gas at least 25 times more potent than carbon dioxide. Traditionally, mine operators have released the gas into the atmosphere, adding methane emissions that drive climate change. Some coal mine operators would like to capture the natural gas for use or sale, but do not have authorization in their coal leases to capture the otherwise vented waste mine methane for use or sale.

The BLM intends to address this problem by issuing guidance that would ensure that, in situations where the oil and gas has not already been leased or is owned by another party, the operator of the coal mine would be authorized to capture the natural gas instead of venting it, and use or sell it. The guidance would provide that, for new coal leases and at the time of lease readjustments, the standard lease language would include a provision allowing the coal lessee to capture and use or sell that waste mine methane that would otherwise be vented from the coal mine, as long as such gas had not already been leased or is owned by another party. In addition, the BLM would add this language to existing coal leases with the agreement of the coal lessee. The language would not require the coal lessee to capture the gas, but would allow it. The BLM is working to develop this guidance and expects to issue it in the near term.

ADDITIONAL BACKGROUND

What is the BLM's role in the federal coal program?

The BLM has responsibility for coal leasing on approximately 570 million acres where the coal mineral estate is owned by the federal government. The surface estate of these lands could be controlled by the BLM, the United States Forest Service, private land owners, state land owners, or other Federal agencies. The BLM works to ensure that the development of coal resources is done in an environmentally sound manner and is in the best interests of the nation.

What laws govern the federal coal program?

The Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended, give the Secretary responsibility for managing coal leasing on

approximately 570 million acres of the 700 million acres of mineral estate that is owned by the Federal Government, where coal development is permissible. The Secretary has delegated her authority for this responsibility to the BLM.

How does the BLM determine where to lease?

Public lands are available for coal leasing only after the lands have been evaluated through the BLM's multiple-use planning process. Leasing federal coal resources is prohibited on public lands, such as military reservations, National Parks, or National Wildlife Refuges. In areas where development of coal resources may conflict with the protection and management of other resources or public land uses, the BLM may identify mitigating measures which may appear on leases as either stipulations to uses or restrictions on operations.

There is a rigorous land use planning process through which all public lands are reviewed for potential coal leasing. Requirements for the land use plan include multiple use, sustained yield, protection of critical environmental areas, application of specific unsuitability criteria, and coordination with other government agencies.

How does the leasing process work?

There are two distinct procedures for competitive coal leasing: (1) regional leasing, where the BLM selects tracts within a region for competitive sale, and (2) leasing by application, where the public nominates a particular tract of coal for competitive sale.

Regional coal leasing requires the BLM to select potential coal leasing tracts based on multiple land use planning, expected coal demand, and potential environmental and economic impacts. This process requires close consultation with local governments and citizens through a Federal/state advisory board known as a Regional Coal Team. However, for decades the demand for new coal leasing has been associated with the extension of existing mining operation on authorized federal coal leases, so all current leasing is done by application.

Leasing by application begins with BLM review of an application to lease a coal tract to ensure completeness, that it conforms to existing land use plans, and that it contains sufficient geologic data to determine the fair market value of the coal. The Agency then prepares an environmental analysis in compliance with NEPA. At the same time, the BLM will also consult with tribal governments and appropriate Federal and state agencies, and will determine whether the surface owner 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 an estimate of the "fair market value" of the coal. This number is kept confidential and is only used to evaluate the bids 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 will be the highest bid that meets or exceeds the coal tract's presale estimated fair market value, assuming that all eligibility requirements are met and the appropriate fees and payments are attached (at a minimum, this amounts to the first year's annual rental payment and one-fifth of the amount bid).

How are revenues generated through leasing coal?

The BLM receives revenues on coal leasing at three points: a bonus paid at the time BLM issues the lease; an annual rental payment of \$3.00 per acre or fraction thereof; and royalties paid on the value of the coal after it has been mined.

The royalty rate for federal coal is currently set at the minimum level allowed by statute, 12.5% of the gross value of the coal produced. The 12.5% royalty rate applies to coal severed by surface mining methods. For coal mined by underground methods, the statute provides that the Secretary may establish a lesser royalty rate. By regulation, the BLM requires an 8% royalty for coal removed from an underground mine. The federal government and the state where the coal was mined share the revenues equally.

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