
DOI Releases Scoping Report on Coal Leasing Reforms

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On January 11, 2017, the Bureau of Land Management (BLM) within the Department of the Interior released a scoping report analyzing a wide range of proposed reforms to the federal coal leasing program, administered by the BLM. The scoping report is an initial step in the National Environmental Policy Act (NEPA) review process for reforming leasing and management of the 475,000 acres of existing coal leases across 10 states, with an estimated 7.4 billion tons of recoverable coal. The last such comprehensive review was in the mid-1980s, and most of the existing regulations were promulgated in the late 1970s, with little change since. The recently released report lays the groundwork for a future programmatic environmental impact statement (PEIS) that will evaluate a variety of potential reforms to the program. It will make recommendations as to which of those reforms would best meet the BLM's stated goal to improve and modernize the program to allow for orderly development of coal resources on federal lands in a way that accounts for the agency's stewardship responsibility and provides the public with a fair return.

The scoping report follows a Notice of Intent, released by the BLM in March 2016, which asked stakeholders to weigh in on several issues related to the federal coal leasing program, including:

- the process, location, and timing for federal coal leasing;
- fair return for the public;
- climate impacts of coal production on federal lands;
- socioeconomic impacts of federal coal leasing;
- exports; and
- energy needs.

Since release of the Notice of Intent 10 months ago, the BLM has conducted six public meetings and received over 200,000 written comments. The BLM summarizes those comments—both oral and written—in the scoping report and uses them to refine the issues for consideration in the Draft PEIS, the preparation of which is the next step in the BLM's process under NEPA.

Key Issues

In describing the need for a PEIS, the BLM identifies four categories of issues and potential reforms

that the PEIS will address: “fair return, climate change, resource management and protection, and program administration.” Scoping Report, at 6-1. For each of these four policy categories, the BLM identifies several specific policy options, noting that the various options could be combined in various ways to reform the coal leasing program.

Fair Return

The BLM acknowledges concerns regarding whether the public is currently receiving a fair return arise “because there is currently very little competition for Federal coal leases.” *Id.* at 6-3. A central objective of the reform, therefore, is to “ensure that the public owners of [Federal] coal receive a full and fair return for this resource.” Scoping Report, at 6-2. To that end, the BLM proposes eight policy options related to the goal of ensuring a fair return. For example, the BLM suggests increasing the royalty rate as a way to better reflect fair market value. The other policy options concerning fair return are:

- implement fair market value process changes;
- limit the use and improve the transparency of royalty rate reductions;
- increase rental rate;
- raise minimum bid bonus;
- implement inter-tract or modified inter-tract bidding processes;
- evaluate current performance bonding amounts and increase as necessary; and
- convene a royalty policy commission.

Climate Change

The BLM notes that “virtually every community in the US is being impacted by climate change, and Federal programs have an obligation to be administered in a way that will not worsen and [will] help address these impacts.” Scoping Report, at 6-3. The scoping report goes on to identify reform opportunities that will “ensure appropriate alignment with US climate goals and adequately reflect the impact of the [coal leasing] program on climate change.”

The BLM proposes five policy options related to climate change and focuses on the prospect of using a “royalty adder” or royalty rate increase to capture the externalities associated with carbon emissions related to coal production. The BLM acknowledges the contribution of federal coal to US carbon emissions, both emissions associated with mining directly and emissions from the ultimate combustion of federal coal. At the same time, the BLM notes that “the environmental effectiveness of a royalty rate increase or adder would be largely contingent on the degree to which the substitute fuel sources are less carbon intensive (e.g., natural gas-fired generation, or renewable generation) as opposed to similarly carbon intensive (e.g., non-Federal coal).” *Id.* at 6-15. The scoping report calls on the PEIS to weigh the impact and effectiveness of accounting for carbon externalities through a rate increase or adder. The other policy options related to climate change are:

- require compensatory mitigation for greenhouse gas emissions;
- lease based on a carbon budget;
- create incentives for methane capture; and
- no new leasing, with limited modifications for existing leases.

Resource Management and Protection

Beyond climate change, the scoping report identifies a need for program reform “to better protect the nation’s other natural resources (e.g., air, water, and wildlife).” *Id.* at 6-4. The BLM identifies seven policy options related to this objective:

- improve application of unsuitability criteria and modify criteria;
- develop strategic leasing plans that address landscape scale issues, multiple use, and mitigation planning;
- account for additional coal-related externalities;
- strengthen lease applicant qualification requirements;
- apply environmental protections to existing leases;
- develop regional mitigation strategies for existing and new coal development; and
- develop best management practices.

Program Administration

Finally, the BLM identifies “a need for common-sense reforms to the Federal coal program that provide for the efficient and orderly administration of coal on Federal lands in light of current market conditions.” Scoping Report, at 6-5. The BLM identifies six policy options related to this objective:

- develop strategic leasing plans that allow for tiering of future lease decisions;
- create a pre-application process;
- create a standardized lease application form and develop an electronic application platform;
- establish a single team to develop fair market value;
- work with other agencies to evaluate means for eliminating overlapping requirements and redundant processes; and
- improve transparency in the leasing process.

Options Not Carried Forward

The BLM also discusses a number of policy options raised by commenters that the agency decided not to carry forward for the Draft PEIS phase. In some cases, such as a suggestion to change how coal is valued for purposes of royalty payments, the BLM has no authority to act because another entity regulates the matter. In other cases, the BLM considered the suggestion and decided it was not worth further attention. For example, the BLM declined to carry forward a proposal to account for social and environmental costs of coal in the fair market value calculation, calling the accounting required “too remote or speculative” and noting that other proposals attempt to address the social and environmental externalities associated with coal production. *Id.* at 6-32 to 6-33.

Next Steps

The scoping report does not end the BLM’s process. Consistent with NEPA, the next step for the agency is to prepare a Draft PEIS. The Draft PEIS will assess several different alternatives created by making different combinations out of the various policy options articulated in the scoping report.

The scoping report suggests three possible policy combinations, but notes that additional analysis of those and other potential combinations is needed. The BLM will also consider a “no leasing alternative” under which the BLM would not issue new coal leases while leaving the regulations governing existing leases unchanged, as well as a “no action alternative.” Once the Draft PEIS is published, the public will have an opportunity to review and comment on it before BLM incorporates that feedback into a Final PEIS. The target date for a Final PEIS is early 2019.

Responsibility for this process, which was initiated under the Obama Administration, now passes to the Trump Administration. In his January 17 confirmation hearing, Rep. Ryan Zinke, President Trump's nominee to serve as the Secretary of the Interior, was asked for his views on the ongoing coal leasing reform efforts, to which he responded, “I think the review is good,” and added that he believes taxpayers should receive fair value for the resources developed from federal lands, including coal.