

**Frequently Asked Questions
about the
Federal Coal Leasing
Program**

1. INTRODUCTION.....	3
2. AUTHORITIES AND REGULATIONS.....	3
3. OTHER AGENCIES ASSOCIATED WITH FEDERAL COAL LEASING.....	4
4. CRITICAL CONCEPTS FOR FEDERAL COAL LEASING.....	4
5. FEDERAL LANDS AVAILABLE FOR LEASE.....	5
6. EXPLORATION FOR FEDERAL COAL.....	5
7. PREFERENCE RIGHT LEASING.....	6
8. LEASE MODIFICATION	6
9. COMPETITIVE LEASING	6
10. LESSEE QUALIFICATIONS.....	8
11. RIGHTS AND PRIVILEGES OF A LEASE.....	9
12. TERMS AND CONDITIONS OF A LEASE	9
13. TRANSFER OR SALE OF A LEASE.....	10
14. TERMINATION OF A LEASE	10
15. LOGICAL MINING UNITS (LMU).....	11
16. INSPECTIONS.....	11
17. ROYALTY RATE REDUCTIONS.....	11

1. Introduction

What is the mission of the Bureau of Land Management?

The mission of the BLM is to sustain the health, diversity and productivity of public lands for the use and enjoyment of present and future generations.

In what geographic areas does BLM lease coal?

BLM has responsibility for coal leasing on approximately 370 million acres where coal mineral estate is owned by the Federal government. The surface estate of these lands could be controlled by BLM, the National Forest Service, private land owners, or other federal agencies.

Are there revenues generated from leasing federal coal?

Yes, a bonus is paid at the time a lease is issued, rental payments are made to continue to hold the lease and royalties are paid on the value of the coal after it has been mined. The leasing and production of federal coal generated about \$300 million in 1996 and \$537 million in 2003.

How much coal is produced from federal coal leases?

As of the mid 1990's, federal coal lease production was about 330 million tons a year and had a value of about \$2.9 billion a year. More than a third of the nation's coal production comes from federal coal leases.

How many federal coal leases are there?

Midway through 2003, approximately 315 federal coal leases were in effect, with 91 located in Wyoming.

2. Authorities and Regulations

What are the authorities for BLM to lease coal?

BLM has several primary authorities under which it leases federal coal:

- The Mineral Leasing Act of 1920, as amended
- The Mineral Leasing Act for Acquired Land of 1947, as amended
- The Federal Land Policy and Management Act of 1976

Are there regulations that specifically cover the leasing of federal coal?

Yes, BLM's regulations for leasing federal coal are located in Title 43 of the Code of Federal Regulations, groups 3000 and 3400. The code is a publication that can be found in law libraries, most larger libraries, or government depository libraries and online from the Government Printing Office at www.access.gpo.gov. The CFR may also be found at any of the BLM offices.

3. Other Agencies Associated with Federal Coal Leasing

Are there other federal agencies that I will have contact with in association with a federal coal lease?

Yes, other federal agencies you may have an association with include the following:

- Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior is responsible for mine permitting and reclamation.
- Minerals Management Service (MMS), Department of the Interior is responsible for receipt and recordation of rent royalty payment.
- United States Forest Service (USFS), Department of Agriculture, its consent is required for leasing in areas where the USFS controls the surface estate.
- Environmental Protection Agency (EPA) for compliance with the Community Right to Know Act.

4. Critical Concepts for Federal Coal Leasing

Are there any unique concepts, terms, or phrases that I should be aware of that would help me to understand the federal coal leasing system?

Yes, several terms or concepts should be brought to your attention. Some specific terms and their meanings are:

- **Fair Market Value (FMV)** - BLM is required by statute to receive FMV for use of the public's resources. Prior to a lease sale, BLM prepares an estimate of the FMV of the coal lease. The estimate is prepared in accordance with standard appraisal methods and is strictly confidential. This term is defined as the amount of cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner who is willing, but not obligated, to sell to a knowledgeable purchaser who desires, but is not obligated, to buy. Fair market value is the sum of future royalties and a bonus paid at the time of lease issuance. As royalty rates are fixed in terms of the lease, success in a competitive lease sale is contingent on a bonus bid. BLM will accept the highest bid submitted at a competitive lease sale that meets or exceeds BLM's estimate of fair market value.
- **Maximum Economic Recovery (MER)** - within the existing or reasonably prospective mining capabilities of the operator/lessee, and under the supervision and authorization of BLM, the operator/lessee will extract all profitable portions of the coal reserve. MER is attained when the operator/lessee has mined any portion of a coal reserve where actual revenues from the sale of coal produced will meet or exceed the actual direct costs of mining the coal reserve. Profitability can be determined on an incremental basis. Maximum economic recovery determinations can consider, but are not limited to, commercially available and economically feasible equipment and technology; coal quality, quantity, and marketability; safety, exploration, operating, processing, and transportation costs; and compliance with applicable laws and regulations. The requirement of MER does not restrict the authority of the BLM

to ensure the conservation of coal reserves and other resources and to prevent the wasting of coal.

- **Commercial Quantities** - defined as being equal to the production of 1 percent of the recoverable coal reserve.
- **Diligent Development** - a statutory requirement of the lessee is that commercial quantities of coal must be produced within ten years after lease issuance. Failure to meet this requirement results in termination of the lease.
- **Continued Operations** - after a lease has met the diligent development requirements, production of commercial quantities of coal each year will be required. Annual commercial quantity requirements can be met by production of coal, payment of an advance royalty in lieu of coal production or a combination of both.

5. Federal Lands Available for Lease

Which public lands are available for coal leasing?

Not all public lands are available for coal exploration or leasing. There is a rigorous land use planning process, through which all public lands are reviewed for potential coal leasing. The 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. Four specific land use planning criteria exist that are unique to potential coal lands. These are:

- Coal potential
- Criteria for lands unsuitable for coal development
- Multiple use considerations
- Surface owner consultation

The outcome of the land use planning process (43 CFR 3420.1-4) is to clear some, but not all, lands for further consideration for coal exploration or leasing.

6. Exploration for Federal Coal

Is it possible to explore for federal coal?

Yes, depending on the land use and coal leasing status of the lands which exploration is desired, three ways to explore for federal coal are:

- On lands open for coal exploration and where the coal resource is not already leased, an exploration license from BLM is required.
- On lands which you already have a federal coal lease, but no permit to mine has been issued, you need to have an exploration plan approved by BLM.
- On lands which already have a federal coal lease and a permit to mine.

Is the data from an exploration program available to the public?

All data obtained from an exploration program must be provided to BLM. Generally, BLM does not make exploration data available to the public. However, the law provides that exploration data can only remain proprietary until a lease is issued for the area or as determined by BLM.

7. Preference Right Leasing

What is a preference right lease and are they still available?

"Preference right leases" remain available only for some lease applications filed prior to enactment of the Federal Coal Leasing Amendments Act of 1976. These leases are issued on a non-competitive basis to the applicant only after an extensive review by BLM. People can no longer apply for a preference right lease for coal. Please consult with a local BLM office if additional information concerning preference right leases is needed.

8. Lease Modification

What is a lease modification?

A "lease modification" is an addition of lands to an existing lease that is limited to no more than 160 acres or the size of the lease if less than 160 acres for the term of the lease. These are issued on a non-competitive basis to the lease applicant. The applicant is still required to pay BLM fair market value for the additional area that is added to the lease.

9. Competitive Leasing

What is competitive coal leasing?

The most common form of federal coal leasing is known as "competitive leasing," which provides an opportunity for any interested party to competitively bid for a federal coal lease.

Why are most federal coal leases issued competitively?

The Federal Coal Leasing Amendments Act of 1976 (FCLAA), amended Section 2 of the Mineral Leasing Act of 1920 to require that all public lands that are available for coal leasing be offered competitively. Two notable exceptions are:

- Preference right lease applications that were submitted prior to enactment of FCLAA
- Lease modifications for existing leases

Are there unique requirements that are part of a federal coal lease that is issued competitively?

Yes, several specific requirements that are part of every competitively issued lease exist:

- A royalty rate of 12.5 percent for coal to be mined by surface mining methods and 8 percent for coal to be mined by underground mining methods.
- A diligent development requirement that requires commercial quantities of coal be produced from the lease within 10 years of lease issuance.
- Commercial quantities of coal has been defined by regulation to be 1 percent of the coal that potentially could be mined, including any coal that has already been mined. Failure to meet this requirement will result in termination of the lease.

- A lease can only be issued if the competitive bid for the lease meets or exceeds the BLM's estimate of fair market value.

Are all competitive leases issued using the same procedures?

No, two distinct procedures for competitive leasing include:

- Regional leasing, where the BLM selects tracts within a region for competitive sale
- Lease by application (LBA), where an application from the public to lease a particular tract of coal is submitted

What are some of the specifics about how the regional leasing process works?

Regional coal leasing requires BLM to select potential coal leasing tracts based upon regional land use planning, expected demand for coal resources and potential environmental and economic impacts that could result from leasing. This process has not been used in recent years because demand for new leasing only has been for maintenance tracts for existing mines, which is done under the lease by application process. The key features of regional leasing include:

- Consultation with local government and citizens through a federal/state advisory board known as a Regional Coal Team (RCT).
- Balance of supply and demand for undeveloped coal.
- Leasing performed under an Environmental Impact Statement (EIS) that considers regional coal development.
- Extensive opportunity for public participation.

What is the process if I wanted to get a coal lease using the lease by application (LBA) process?

The general LBA process follows:

- File an application with the appropriate BLM State Office indicating your interest in a specific coal tract. Each BLM State Office can provide you with further details of what is required in this application.
- BLM will review your application to assure that it conforms to pertinent land use plans and determine that the coal tract you propose to lease is appropriate for coal leasing. BLM at this time will also review geologic information for the area to ensure the tract is reasonably configured so that federal coal will not be bypassed.
- Your application is then reviewed by the RCT at a public meeting. Based upon all available information and public comment, the RCT recommends to BLM whether to continue with your application as applied for, to modify your application or to reject your application.
- At this point, the preparation of an Environment Assessment (EA) or an Environmental Impact Statement (EIS) for the tract you proposed to lease is started. The EA or EIS requires preparation and publication of a draft document, receipt and analysis of public comments and publication of a final document.

During this period, BLM will consult with other government agencies. Depending on the specific requirements and conditions of the coal tract you have proposed to lease, this could include a surface management agency, the state, Indian tribes or bands, the Department of Justice, or other agencies as needed. BLM will publish, at the expense of the successful bidder, public notice of the lease sale. This notice is published in a newspaper in the area of the tract and in the Federal Register. This notice provides some basic information concerning the tract and provides detailed sale and bidding instructions to anyone who might desire to bid on the tract.

- An estimate of fair market value is prepared. The lease sale begins with the receipt of sealed bids prior to the sale. The sealed bids are opened at a public lease sale. The apparent high bid is accepted contingent upon it meeting or exceeding BLM's estimate of fair market value (FMV), that all adjudication requirements are met, and that the appropriate fees and payments are attached. At a minimum, one years annual rental payment (\$3.00 per acre or fraction thereof) and one fifth of the bonus bid is required to be attached to the bid. The remaining four fifths of the bonus bid can be paid in equal installments over the next four years. By statute, half of the bonus bid and subsequent royalty are shared equally with the State in which the coal lease is located.
- The minimum bid for a tract is \$100.00 per acre or fraction thereof. The minimum bid is not intended to represent fair market value.

10. Lessee Qualifications

Are there limitations concerning who can acquire or hold a federal coal lease?

Yes. In order to be qualified to obtain a federal coal lease, you must be:

- an adult citizen of the United States
- an association of citizens of the United States
- a corporation organized under the laws of the United States, or of any state, and meet all the requirements of 43 CFR 3472
- Acreage limitation per lessee
Statewide - 75,000 acres
Nationwide - 1,500,000 acres

May a minor child acquire a federal coal lease?

A federal coal lease cannot be acquired by a minor. However, a federal coal lease may be issued to a legal guardian or trustee on behalf of the minor.

Can an alien acquire and hold a federal coal lease?

An alien may hold interest in federal coal leases only by stock ownership in United States corporations which hold federal coal leases AND provided that the laws of their native country do not deny similar privileges to citizens of the United States. An alien

cannot obtain an interest in a federal coal lease by owning a portion of a limited partnership that holds a federal coal lease.

11. Rights and Privileges of a Lease

Does my federal coal lease provide me with any special rights or privileges?

The lease grants you the right to explore and drill for, extract, remove, and dispose of some or all of the coal deposits that may be found in the leased land. The lessee or operator cannot remove any mineral other than coal from the leased land.

12. Terms and Conditions of a Lease

Does the lease require that I have all the required permits for development and operation of a coal mine?

The lessee or the operator cannot construct or operate a coal mine without the appropriate licenses and permits from OSM or the affected state and local governments, as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Do I have to have a bond for the lease?

Yes, before a lease may be issued, the lessee must furnish a bond in an amount determined by BLM to ensure compliance with all the lease terms and conditions. At a minimum, a bond is required to cover the remaining balance of the bonus bid, one year of advanced rental, and one year of advanced royalty if the lease is in production. Bonding for reclamation is required under the lessee's mining permit. Your bond with BLM could include provisions for protection of the environment. BLM may require a change, either increase or decrease, of the bond amount at any time conditions warrant such a change.

What are the acceptable instruments for the bond?

The bond requirement may be met by corporate surety bonds, cash bonds, or personal bonds that are secured by negotiable Treasury securities, accompanied by a power of attorney executed on a form approved by the director.

What are the rental fee requirements for a federal coal lease?

All leases require payment of an annual rental fee of not less than \$3 an acre or fraction thereof. Rental fees for the subsequent year are due on the anniversary date of the lease. Failure to timely pay annual rental fees can result in termination of your lease. All rental payments are paid to MMS.

Does the lease require payment of royalties?

Yes. The royalty for surface mined coal has been established by statute at 12.5 percent

of the gross value of coal produced. For coal mined by underground mining methods, the royalty rate has been established by regulation at 8 percent of the gross value of coal produced. All royalty collections are managed by MMS. Royalty receipts are shared equally with the State from which the mineral was extracted.

How long will a federal coal lease be in effect?

A Federal coal lease has an initial term of 20 years. At the end of its initial 20 year term, and every ten years thereafter, the stipulations of the lease may be "readjusted" by BLM. At readjustment, the BLM may add, modify, or change the stipulations of the lease to meet current statutory or policy requirements.

13. Transfer or Sale of a Lease

Once I have a federal coal lease, can I sell it to another party?

Yes. If a coal lease is acquired from another party, a request must be submitted to have the lease transferred within 90 days after the date the transfer was executed by the transferor. The rights of the transferees will not be recognized by BLM until the transfer has been approved. The transferor remains responsible for all obligations of the lease until the transfer is approved. An assignment of any bed of the coal deposit, or a part of the land in a lease, will result in a new coal lease being created for the partial assignment, if approved.

Can I exchange one coal lease for another?

An exchange of coal leases is allowed when specifically provided for in legislation, for compensation cases that involve coal that was withdrawn under alluvial valley floors, or when the exchange is determined to be in the public interest.

14. Termination of a Lease

How can a federal coal lease be terminated?

A coal lease shall terminate at the end of the tenth year if the lease has not met the diligent development requirement.

Can a federal coal lease be surrendered?

Yes. The lessee may surrender a lease in whole or in part by filing a written request for relinquishment with the BLM office which has jurisdiction over the leased lands. A relinquishment, if approved, takes effect on the date it was filed. The lessee must comply with the lease terms and conditions and have all payments and fees paid. The lease bond can be used to assure compliance with terms and conditions of the lease. Reclamation is a legal obligation under the lessee's SMCRA mine permit.

15. Logical Mining Units (LMU)

What is a logical mining unit?

A logical mining unit is an administrative construction that allows the lessee or operator to consolidate the diligent development and continued operations requirements for all the federal leases and other coal tracts within the boundaries of the mine. An LMU provides for continuity in management of the coal resource whenever the geologic characteristics of a coal seam cross property boundaries. LMU's have been defined as an area of land in which the coal can be developed in an efficient, economical, and orderly manner as a unit with due regard for conservation of the coal and other resources. An application is required to form an LMU. Contact a local BLM office for specific instructions.

16. Inspections

Will BLM routinely inspect my lease and mining operations?

Yes, BLM inspects all leases and mining operations quarterly. BLM inspections are designed to ascertain that royalty is being paid on all the coal mined, that coal is not routinely or deliberately being lost, and that mining operations are consistent with the terms and conditions of the lease.

Is BLM the only agency that will inspect mining operations?

No, there are other agencies that have authority to inspect mining operations for compliance with other federal or state laws and regulations.

17. Royalty Rate Reductions

Am I always required to pay royalty at the rate specified in my lease?

BLM expects as much coal to be produced as possible at the royalty rate specified in the lease. However, BLM does recognize that as circumstances change, instances will occur where the lease royalty rate is detrimental to attaining the greatest ultimate recovery of the coal resource. Under certain circumstances BLM can, upon application by the lessee or operator, temporarily reduce the royalty rate for a specific area of coal. The general requirements for a royalty rate reduction are:

- Royalty rate reduction must encourage the greatest ultimate recovery of the coal resource.
- Royalty rate reduction must be in the interest of conservation of the coal and other resources.
- In the judgement of BLM, the reduced royalty rate is necessary to promote development of the coal resource. Contact a local BLM office for specific instructions.

