4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3400, 3430, 3470, and 3480

[LLWO32000.L13200000.PP0000.24-1A]

RIN 1004-AD93

Lease Modifications, Lease and Logical Mining Unit Diligence, Advance Royalty, Royalty Rates, and Bonds

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule**.**

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend its regulations pertaining to the administration of Federal coal leases and logical mining units (LMUs). The proposed rule would implement Title IV, Subtitle D of the Energy Policy Act of 2005; clarify that a royalty rate of 12½ percent will be assessed on all Federal coal except coal that is mined from underground mines; withdraw the Logical Mining Unit Application and Processing Guidelines (LMU Guidelines); promulgate portions of the LMU Guidelines as regulations; establish new processing fees; and make technical and editorial corrections to the regulations.

DATES: Send your comments on this proposed rule to the BLM on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The BLM is not obligated to consider any comments received after the above date in making its decision on the final rule. If you wish to comment on the information collection requirements in this proposed rule, please note that the Office

of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of being considered if OMB receives it by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C Street, NW, Room 2134LM, Washington, D.C. 20240, Attention: 1004–AD93. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE, Room 2134LM, Washington, D.C. 20003, Attention: WO630, 1004-AD93. Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions at this website.

Comments on the information collection burdens: Fax: Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax (202) 395-5806. Electronic mail: oira_submission@omb.eop.gov. Please indicate "Attention: OMB Control Number 1004-XXXX," regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, you should provide the BLM with a copy of your comments, at one of the addresses shown above, so that the BLM can summarize all written comments and address them in the final rule preamble.

FOR FURTHER INFORMATION CONTACT: William Radden-Lesage, Mining Engineer, Solid Minerals Division (WO320), Bureau of Land Management, at Room 4215, 20 M Street, SE, Washington, DC 20003; or at (202) 912-7116.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

If you wish to comment, you may submit your comments by any one of several methods: Mail: You may mail comments to U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C Street, NW, Room 2134LM, Washington, D.C. 20240, Attention: 1004-AD93. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE, Room 2134LM, Washington, D.C. 20003, Attention: WO630, 1004-AD93. Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions at this website.

You may submit comments on the information collection burdens directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax (202) 395-5806, or oira_submission@omb.eop.gov. Please indicate "Attention: OMB Control Number 1004-XXXX." If you submit comments on the information collection burdens, you should provide the BLM with a copy of your comments, at one of the addresses shown above, so that the BLM can summarize all written comments and address them in the final rule preamble.

Please make your comments as specific as possible by confining them to issues for which comments are sought in this notice, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and

2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see "DATES") or comments delivered to an address other than those listed above (see "ADDRESSES").

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "ADDRESSES" during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment — including your personal identifying information — may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background and Discussion of the Proposed Rule

A. General Background

1. On August 8, 2005, the President signed into law the Energy Policy Act

(EPAct) of 2005, Public Law No. 109-58, 119 Stat. 594. Title IV, Subtitle D of the EPAct, is entitled the "Coal Leasing Amendments Act of 2005." The BLM proposals to implement provisions of the EPAct that require regulatory amendments are discussed in the section-by-section analysis that follows.

The Office of Natural Resources Revenue (ONRR) (formerly the Minerals Revenue Management Program of the Minerals Management Service) is proposing a companion rule that implements that part of Section 434 of the EPAct concerning the processes and standards for determining value for payment of advance royalties.

This proposed rule would implement all other Mineral Leasing Act (MLA) amendments enacted by Title IV, Subtitle D of the EPAct.

2. The BLM proposes to withdraw its LMU Guidelines, which were published in final form, following public comment, in the Federal Register on August 29, 1985 (50 FR 35145). For purposes of withdrawing the LMU Guidelines and promulgating parts of them as regulations, the BLM analyzed the guidelines and divided them into 3 categories. The first category requires no additional action beyond withdrawal because those parts of the LMU Guidelines remain valid, and are already in regulations. The second category consists of the parts of the LMU Guidelines that are now inconsistent with the MLA, as amended by the EPAct. These parts of the LMU Guidelines need to be withdrawn and replaced by regulations that are consistent with the new statute. The third category includes parts of the LMU Guidelines that do not conflict with authorizing statutes, but are not currently in or separately supported by the BLM's coal management regulations. These parts of the LMU Guidelines need to be promulgated as regulations so that the BLM can maintain the existing policies

after the LMU Guidelines are withdrawn. Each proposed regulatory addition that originated from the LMU Guidelines is described in the section-by-section analysis.

B. Section-By-Section Analysis of Proposed Changes in 43 CFR Part 3000 – Minerals Management: General

The BLM proposes to amend 43 CFR 3000.12 by adding provisions to recover processing costs for 3 actions initiated by coal operators/lessees under 43 CFR part 3480. Section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734) authorizes the BLM to establish reasonable fees with respect to applications relating to administration of the public lands.

1. Applications for a history of timely payments determination.

The BLM proposes a processing fee for an application for a history of timely payments determination. In order to qualify for a waiver of the bond requirement for deferred bonus bid installment payments, a Federal coal lessee must apply for and obtain a history of timely payments determination. Under the proposed "history of timely payments" provisions at proposed new section 3474.10, the BLM would incur unique costs while processing an application for a history of timely payments determination, and BLM personnel would be diverted from other tasks and duties in order to verify lease ownership. After the BLM verifies lease ownership, it would then forward the application to the ONRR for an assessment of the applicant's lease payment history.

The BLM would provide a written approval to an applicant who satisfies the criteria for a history of timely payments determination. The written determination would be effective for all leases covered by the application until the deferred bonus is

paid in full in accordance with the terms and conditions of the leases.

Where an applicant fails to satisfy the criteria, the BLM would:

- reject the application, and immediately require the applicant to post a separate bond in an amount equal to one deferred bonus payment; or
- increase an existing bond amount that is equal to the amount of one deferred bonus payment.

In either case, a qualifying applicant would gain a special benefit. Therefore, the BLM has concluded that it should establish a reasonable fee to recover the cost of processing an application for a determination of a history of timely payments.

The BLM has gained experience processing applications for a history of timely payments determination since interim guidance (BLM-WO-IM-2006-045) was issued on November 25, 2005. The BLM's analysis indicates that the processing workload does not require case-by-case cost recovery determinations. The BLM is therefore proposing a fixed processing fee for all history of timely payments applications to cover the BLM's reasonable processing costs. The BLM anticipates that processing a history of timely payments application would require 2 hours of staff time at a GS-11, step 5 salary ($31.17 per hour) and 1 hour of supervision at a GS-13, step 5 salary ($44.43 per hour) (U.S. Office of Personnel Management Salary Table 2013-RUS, at: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/rus_h.pdf). In addition, consistent with current cost calculation guidance (WO-IM-2013-015; November 20, 2012), an additional 19.8 percent would be added to cover the BLM's indirect costs and 30 percent would be added for employee benefits, for a total of $159.94, which was rounded to the nearest

$5 for a proposed fee of $160. The BLM is therefore proposing a fixed processing fee of $160 for each application for a history of timely payments determination. Like other fixed processing fees, the proposed fee would be subject to periodic adjustment according to the change in the Implicit Price Deflator for Gross Domestic Product. See 43 CFR 3000.10(c).

2. Applications to pay advance royalty.

The proposed advance royalty provisions at subpart 3483 will require the BLM to incur unique costs, as provided by Section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734), while processing an application to pay advance royalty. Processing an application to pay advance royalty is time-sensitive, requiring personnel to be diverted from other tasks and duties to process the application in a timely manner. For each application to pay advance royalty, the BLM will verify the production history of each lease or LMU and determine the number of tons upon which the advance royalty payment will be based. The BLM will forward to the ONRR the advance royalty application and the BLM's determination of the advance royalty tonnage for their determination of the advance royalty value and subsequent billing to the applicant for the advance royalty. Upon approval by the BLM and ONRR, the applicant would be allowed to pay advance royalty to remain in compliance with the continued operation requirement of the MLA (30 U.S.C. 207(b)), and as described in the analysis of 43 CFR subpart 3483 in this preamble. Approval to pay advance royalty is a unique benefit to the applicant, enabling the applicant to continue to hold the lease or LMU even while the lease or LMU is not in production. Therefore, the BLM has concluded that it should establish

a reasonable fee to recover the cost of processing an application to pay advance royalty.

The BLM has extensive experience processing applications to pay advance royalty. Although Section 434 of the EPAct changed certain procedures and standards related to advance royalty, such as when the BLM should receive an advance royalty application and how the ONRR determines the advance royalty value, the BLM does not foresee any significant change in the BLM's fundamental workload once the BLM receives such an application. The BLM's workload analysis does not indicate a need for case-by-case cost recovery determinations. Therefore, the BLM is proposing a fixed fee to recover the BLM's reasonable processing costs for each application to pay advance royalty. The BLM anticipates that processing an application to pay advance royalty would require 1 hour of staff time at a GS-11, step 5 salary ($31.17 per hour), 1 hour of a mining engineer's time to review the production records for the lease or LMU to determine the tonnage, as specified in Section 3484.3, on which the advance royalty payment will be based, at a GS-12, step 5 level salary ($37.37 per hour), and 1 hour of supervision at a GS-13, step 5 salary ($44.43 per hour) (U.S. Office of Personnel Management Salary Table 2013-RUS, at: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/rus_h.pdf). In addition, consistent with current cost calculation guidance (WO-IM-2013-015; November 20, 2012), an additional 19.8 percent would be added to cover the BLM's indirect costs, and an additional 30 percent would be added for employee benefits, for a total of $169.23. After rounding to the nearest $5, the BLM is proposing a fixed processing fee of $170 for each application for payment of

advance royalty. Like other fixed processing fees, the proposed fee would be subject to periodic adjustment according to the change in the Implicit Price Deflator for Gross Domestic Product. See 43 CFR 3000.10(c).

3. Applications to extend an LMU for an additional 10 years.

Section 433 of the EPAct provides for the extension of the term of an LMU beyond 40 years. As proposed at section 3487.10, applications for extension of the 40-year LMU term will require special processing by the BLM. For each application, the BLM will need to verify the land status of the LMU and complete an engineering analysis to determine whether the extension would ensure the greatest ultimate recovery of the coal resources within the LMU. A successful applicant would benefit by having up to an additional 10 years to maintain the combined reserves as an LMU, consistent with the regulations at subpart 3487. Therefore, the BLM has concluded that it should recover the cost of processing applications to extend the 40-year LMU term, as provided by Section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

The BLM has no experience processing applications to extend the term of an LMU, because this is a new process provided by the EPAct. Moreover, no LMU is currently near the end of its maximum 40-year term. The BLM estimates that the workload to process an application to extend the term of an LMU would not be significant. At this time the BLM's workload analysis does not indicate a need for case-by-case cost recovery determinations. Therefore, the BLM is proposing a fixed fee for all applications to extend the term of an LMU that will recover the BLM's reasonable processing costs.

The BLM anticipates that processing an application to extend the term of an LMU would require 1 hour of staff time at a GS-11, step 5 salary ($31.17 per hour), 1 hour of a mining engineer's time to review the LMU's resource recovery and protection plan (R2P2) at a GS-12, step 5 level salary ($37.37 per hour), and 1 hour of supervision at a GS-13, step 5 salary ($44.43 per hour) (U.S. Office of Personnel Management Salary Table 2013-RUS, at: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/rus_h.pdf). In addition, consistent with current cost calculation guidance (WO-IM-2013-015; November 20, 2012), an additional 19.8 percent would be added to cover the BLM's indirect costs, and an additional 30 percent would be added for employee benefits, for a total of $169.23. After rounding to the nearest $5, the BLM is proposing a fixed processing fee of $170 for each application to extend the term of an LMU. Like other fixed processing fees, the proposed fee would be subject to periodic adjustment according to the change in the Implicit Price Deflator for Gross Domestic Product. See 43 CFR 3000.10(c).

C. Section-by-Section Analysis of 43 CFR Part 3400 – Coal Management: General

1. The proposed rule would add Title IV, Subtitle D of the EPAct of 2005 (Public Law No. 109-58) and Section 2505 of the Energy Policy Act of 1992 (Public Law No. 102-486) to the authorities described in the authority section (section 3400.0-3) of the regulations.

2. Section 3400.0-5 would be amended by removing the lettered paragraph designations (a) through (qq) and arranging the definitions in alphabetical order, by

redesignating the introductory text as paragraph (a), and by redesignating paragraph (rr) as paragraph (b).

3. The proposed rule would add a definition of the term "underground mine" to section 3400.0-5. The new definition would aid the BLM in determining when the 8 percent royalty rate for coal recovered from an underground mine, as proposed at section 3473.3-2(a)(2), is applicable. The term "underground mine" would mean, for the purposes of establishing a royalty rate under the terms of a coal lease, an excavation in the earth for the purpose of severing coal in which persons routinely work in an environment where undisturbed earth is directly overhead, and where there must be roof control and ventilation plans approved by the Mine Safety and Health Administration (MSHA) that expressly allow persons to work routinely where there is undisturbed earth directly overhead. The phrase "routinely work" means that the persons who will be working underground will be doing so whenever they are working on the lease. A possibility that persons might, or might not, have to work underground on any given day to excavate and sever coal from the mine does not establish that persons will "routinely work" underground.

4. The proposed rule would add a new section 3400.7 that describes the information collection requirements and burdens associated with coal management, and discloses the OMB control number (1004-0073) that applies currently, and that the BLM intends will apply to those requirements.

In this proposed rule, the BLM is proposing to revise control number 1004-0073. Some of the revisions would modify existing collection activities, and others would add new activities.

D. Section-by-Section Analysis of 43 CFR Subpart 3432 – Lease Modifications

1. The proposed rule would add Section 13 of the Federal Coal Leasing Amendments Act (FCLAA) of 1976 (30 U.S.C. 203); and Section 432 of the EPAct (Public Law No. 109-58) to the authorities listed in the authority section (section 3432.0-3).

2. Section 432 of the EPAct, amending 30 U.S.C. 203, provides for several changes in the statutory standards that apply to the modification of a coal lease. The EPAct increased from 160 acres to 960 acres the maximum acreage that may be added to a Federal coal lease through lease modification during the life of the lease. The BLM is proposing to delete the last sentence of section 3432.1(a), which contains the prior maximum acreage provision, and replace that sentence with a new paragraph (c) that would provide that the acreage added to the lease by modification after August 4, 1976, must not exceed the lesser of 960 acres or the acreage of the lease when the lease was issued.

Section 432 of the EPAct also provides that an approval of a lease modification is a finding that the modification would be in the interest of the United States; would not displace a competitive interest in the lands; and would not include lands or deposits that can be developed as part of another potential or existing operation. Because the language of existing 43 CFR 3432.2(a) closely resembles the language of the EPAct, the BLM has determined that no change to that provision is necessary.

3. The BLM anticipates that Section 432 of the EPAct will generate proposals for large lease modification tracts with proportionally greater bonus values. The bonus value is a cash payment, in addition to production royalties and annual rental payments, that is payable during the term of a lease by a successful bidder at a competitive lease sale. The BLM also anticipates that lessees will be interested in paying the lease modification bonus on a deferred basis, similar to that currently offered for competitive coal leases. Further, under Section 436 of the EPAct, a lessee with a history of timely payments and prior approval by the BLM does not need to provide the BLM a bond to assure the BLM of payment for the unpaid deferred bonus. A lessee's payment of the fair market value for lease modifications is analogous to the payment of deferred bonuses for competitive leases. Consequently, the BLM has concluded that it is appropriate, based on the discretion of the approving BLM official, that the fair market value for lease modifications may be paid on a deferred basis. This approach is similar to that which the BLM uses for competitive coal leasing. Therefore, the BLM is proposing to amend section 3432.2(c) to allow payment of the bonus for a lease modification on a deferred basis.

E. Section-by-Section Analysis of 43 CFR Subpart 3435 – Lease Exchange

The regulations at section 3435.3-5 contain a reference to a "draft environmental assessment or environmental impact statement." Although the word "draft" precedes the reference in section 3435.3-5 to an environmental assessment (EA) and an environmental impact statement (EIS), the term "draft" was intended to apply exclusively to an EIS rather than to an EA. The BLM is therefore proposing to change the regulations to correct this inaccuracy.

The proposed deletion of the reference to draft EAs would recognize that when an EA is prepared, there will not necessarily be a public notice of availability. That change is consistent with the BLM's discretion to determine how and when to seek public involvement in the preparation of an EA, in accordance with BLM's January 2008 NEPA Handbook H-1790-1, section 8.2, and regulations of the Council for Environmental Quality at 40 CFR 1500.2(d), 1501.4(b), and 1506.6.

F. Section-by-Section Analysis of 43 CFR Part 3470 – Coal Management Provisions and Limitations

The authority citation for 43 CFR Part 3470 is proposed to be revised to add a reference to 30 U.S.C. 207, and revise the existing reference to 43 U.S.C. 1701 et seq. to read "43 U.S.C. 1733 and 1740."

G. Section-by-Section Analysis of 43 CFR Subpart 3473 – Fees, Rentals, and Royalties

In recent years, much dialogue has taken place concerning whether various hybrid technologies for mining coal, specifically continuous highwall mining and auger mining, constitute underground mining or surface mining. In light of this dialogue, the BLM has determined that regulations governing applicable royalty rates need to be revised to address the current technologies used to extract Federal coal.

The MLA provides for payment of a royalty of not less than 12½ percent of the value of coal, except that the Secretary may determine a lesser rate for underground coal mining (30 U.S.C. 207(a)). The current coal management regulations specify that a lease shall require payment of a royalty of not less than 12½ percent of the value of coal recovered from a surface mine and 8 percent for coal

recovered from an underground mine (sections 3473.3-2(a)(1) and (2)).

The BLM is proposing to clarify those mining activities that constitute underground mining and therefore are eligible for the lower underground royalty rate. The proposal would continue the current 8 percent royalty rate for coal recovered from an underground mine at section 3473.3-2(a)(2). However, the proposed rule, at section 3473.3-2(a)(1), would establish that the minimum 12½ percent royalty rate applies to coal recovered by any other extraction method. Currently, by regulation, the 12½ percent minimum royalty rate applies only to coal severed from a surface mine. Thus, if a dispute were to arise as to the applicable royalty rate under the proposed rule, the BLM would only need to establish whether coal is recovered from an underground mine or not. If the coal is not extracted from an underground mine, the 12½ percent royalty rate would apply.

The BLM is also proposing to define the term "underground mine" to add clarity to the determination of the proper royalty rate. A discussion of this proposed definition is in this preamble in the discussion of part 3400.

H. Section-by-Section Analysis of 43 CFR Subpart 3474 – Bonds

The BLM's requirements for coal lease bonds are contained in subpart 3474. This proposed rule contains a number of proposed amendments to subpart 3474, some of which relate to Section 436 of the EPAct. These proposed amendments are as follows:

1. Proposed section 3474.1 would be entitled "Acceptable bonds" to make it clear that it addresses the types of bonds that the BLM will accept to cover coal leases. It would continue to contain the requirements of existing section 3474.1(a).

Paragraph (b) would be included to inform the public that bonding requirements for exploration licenses are in section 3410.3-4. That text currently appears in section 3474.2(b). The substance of existing section 3474.1(c) would be moved to proposed section 3474.11 because it relates to LMU bonds.

2. Proposed section 3474.2 would be entitled "Filing requirements for bonds" and would include in paragraph (a) the requirement in existing section 3474.1(b) that the applicant or bidder must file a lease bond in the proper office within 30 days after receiving a notice from the BLM. The lease bond must be on a form approved by the BLM. Under a new paragraph 3474.2(b), the BLM could approve a brief extension to the filing requirement when the applicant or bidder experiences delays in securing a bond that are beyond the control of the applicant or bidder.

3. Under proposed section 3474.2(c), the BLM would issue a new lease or lease modification only after an adequate lease bond or other financial surety is filed, determined to be adequate, and accepted by the BLM. Similar requirements are already in the regulations at section 3474.1(a) and section 3432.3(b). However, neither of these provisions contain the requirements found in the BLM 3474 Bond Manual that a financial surety must be: (1) submitted to the proper BLM office; (2) found to be adequate by the BLM; and (3) accepted by the BLM.

4. The proposed rule would redesignate existing sections 3474.3 through 3474.6 as proposed sections 3474.5 through 3474.8, respectively, to allow insertion of two new sections.

5. New section 3474.3 would address the required amount of lease bonds. Under existing regulations at section 3474.2, the BLM establishes the amount of the lease

bond. Currently, guidance to determine the amount of the bond is in the BLM 3474 Bond Manual of February 18, 1988, which establishes that the bond value is equal to the cumulative value of: (1) the annual rental payment for one year; (2) 3 months of production royalty if a lease is producing coal, or 1 year of advance royalty payment if a lease is not producing coal and has achieved diligence; (3) the value of any unpaid bonus payments; and (4) 100 percent of the cost of reclamation associated with exploration licenses or exploration activities on leases not yet in a Surface Mining Control and Reclamation Act (SMCRA) mining permit.

The proposed rule would provide that the lease bond must be sufficient to cover the cumulative amount of: (1) 1 year's rental; (2) 3 months of production royalty or, if advance royalty was paid in the prior continued operation year, 1 year's advance royalty; (3) one annual deferred bonus payment (if applicable); and (4) 100 percent of the cost of reclamation associated with exploration licenses or exploration activities on leases not yet in a Surface Mining Control and Reclamation Act (SMCRA) mining permit. The minimum bond amount, already established in regulations at 43 CFR 3410.3-4(b)(2) for exploration licenses and consistent with the BLM M-3474 Bond Manual, is $5,000. The minimum bond value is not indexed for inflation. The lease bond protects the BLM from an operator/lessee defaulting on its financial obligations, including reclamation.

6. New section 3474.4 addresses the review and adjustment of bond amounts. Under the proposed rule, the BLM would review bonds at regular intervals, or as changes in conditions warrant, to assure that bond amounts remain appropriate under section 3474.3 of these regulations. This provision would apply to bonds for leases,

exploration licenses, and licenses to mine.

The BLM strives to review bond amounts on an annual basis. The exact duration between bond reviews could be more or less than 1 year depending on the workload within the responsible BLM office. Conditions that might warrant another review would be payment in full of the deferred bonus amount, authorization of a lease modification, or a partial relinquishment of the lease. This review could result in the bond amount being modified upward or downward.

7. The proposed rule would amend redesignated section 3474.5 (existing section 3474.3) by removing existing paragraph (a), which relates to converting statewide or nationwide bonds to individual bonds. That paragraph no longer has relevance for Federal coal leases, all of which now have individual lease bonds.

Existing section 3474.3(b)(1) is proposed to be removed because 30 CFR 773.16 and 800.11(a) provide that no permit may be issued under SMCRA unless the permit applicant posts a performance bond or equivalent guarantee to ensure the completion of the reclamation plan approved in the permit. This requirement applies to all surface coal mining operations under the Office of Surface Mining Reclamation and Enforcement's (OSM) permanent regulatory program; and the permanent regulatory program applies to all surface coal mining and reclamation operations on Federal lands, regardless of whether the OSM and the state have entered into a cooperative agreement to regulate mining on Federal lands within the state. The BLM also notes that, under 30 CFR 740.15(b), SMCRA bonds on Federal lands in states with a cooperative agreement to regulate mining on Federal lands must be payable to both the state and the United States.

The BLM proposes to redesignate existing paragraph (b)(2) as section 3474.5, replace the term "Surface Mining Officer" with "Office of Surface Mining Reclamation and Enforcement" to reflect the correct title of the bureau, and revise the section heading from "Bond conversions" to "Bond Release," which is the subject of the section.

8. The proposed rule would amend redesignated section 3474.6 (existing section 3474.4), which relates to qualified sureties, to make it clear that the BLM would accept bonds only from sureties with current certificates of authority from the Secretary of the Treasury.

9. No changes are proposed for the text or section heading of redesignated section 3474.7 (existing section 3474.5).

10. In redesignated section 3474.8 (existing section 3474.6), a sentence would be added from the existing BLM 3474 Bond Manual providing that an existing lease bond or other financial surety must remain in effect until another bond or other financial surety is filed and the BLM accepts it as a replacement. In addition, the proposed rule would make it clear that the prior surety or other bond provider remains responsible for obligations that accrued during the period of liability while the bond was in effect until such liability is released by the BLM.

11. The proposed rule would add new section 3474.9, allowing an operator/lessee to combine the bond requirements for all the leases that it holds and that are within the boundary of a single SMCRA mine permit into a single consolidated lease bond. The amount of the consolidated lease bond would be equal to the combined amount of the bond requirements for all of the leases within the mine permit boundary. This

provision would be added for the convenience of both coal operators and the BLM to simplify the periodic review and adjustment of the cumulative bond amount for all leases covered by the consolidated lease bond.

12. The proposed rule would add new section 3474.10. Proposed section 3474.10 would implement Section 436 of the EPAct concerning bonds for deferred bonus bid payments.

The BLM is required to receive fair market value for all acreage leased for the development of Federal coal. Fair market value includes a bonus bid or payment that is a cash payment in addition to the payment of annual rental and production royalties. Except for lease modifications, all acreage leased for the development of Federal coal is offered for competitive bidding. By statute (30 U.S.C. 201(a)), at least 50 percent of the total acreage offered for Federal coal leasing in any 1 year must be leased under a system of deferred bonus payment. The deferred bonus payment system established by regulation (section 3422.4(c)) specifies that the lessee will pay the bonus in five equal annual installments, with the first payment submitted with the bid at the time of the lease sale. The remaining four deferred bonus bid payments are paid in equal annual installments on the first, second, third, and fourth anniversary dates of the lease.

Section 436 of the EPAct, codified at 30 U.S.C. 201(a)(4) – (5), adds new surety bond requirements for the deferred bonus bid. The EPAct provides that:

- For leases issued after August 8, 2005 (the date the EPAct was enacted), the Secretary shall not require a surety bond for the deferred bonus bid installment payments for any coal lease issued to a lessee with a history of timely payment of

noncontested production royalties, advance royalties, and bonus bid installment payments.

- For leases issued before August 8, 2005, the Secretary may waive the financial-assurance requirement if that lessee has a history of timely payments.

Thus, the exemption for lessees with a history of timely payments is mandatory for leases issued after August 8, 2005. Section 436 makes such a waiver discretionary only for leases issued before August 8, 2005.

Section 436 also provides that, notwithstanding any other provision of law, if a lessee fails to pay any deferred bonus bid installment payment on time, the Secretary must provide written notice to the lessee that a deferred bonus bid installment payment has not been paid. If the lessee fails to pay the deferred bonus bid installment payment within 10 days after receipt of the written notification, the coal lease will automatically terminate and the lessee will forgo any deferred bonus bid installment payments that have already been made.

The proposed regulations implementing Section 436 are modeled on the interim guidance (BLM-WO-IM-2006-045) that the BLM issued on November 25, 2005. The regulations in this proposed rule would replace that interim guidance and implement this section of the EPAct.

a. Paragraph (a) of proposed section 3474.10 would introduce the concept of a "history of timely payments" for Federal coal leases issued both before and after enactment of the EPAct. Proposed paragraph (a)(1) would provide that for Federal coal leases issued before August 8, 2005, the BLM may waive the bond requirement for deferred bonus bid installment payments if the BLM determines, in consultation

with the ONRR, that the lessee has a history of timely payments of noncontested royalties, advance royalties, and bonus bid installment payments. If the BLM decides not to waive the bond requirement, the lessee will be required to continue to maintain the value of the bond consistent with the regulations.

b. Proposed paragraph (a)(2) would provide that, for leases and lease modifications issued after August 8, 2005, the BLM will not require a surety bond or other financial assurance to guarantee payment of deferred bonus bid installment payments if the BLM determines, in consultation with the ONRR, that the lessee or successor in interest has a history of timely payments. If the BLM determines that a prospective lessee does not have a history of timely payments, the lease or modified lease can be issued only after an amount equal to one annual deferred bonus payment is added to the amount of the lease bond, LMU bond, or consolidated lease bond. If the required amount of a lease bond, LMU bond, or consolidated lease bond includes one annual deferred bonus payment, the BLM will reduce the lease bond, LMU bond, or consolidated lease bond amount by an amount equal to one deferred bonus payment if the BLM, at a later date, determines that the lessee has a history of timely payments, or when the deferred bonus is paid in full. However, the lessee or mine operator must file an application, as described in section 3474.10(b), for a history of timely payments determination, before the BLM will initiate an analysis and make a determination concerning the lessee's or mine operator's payment history.

c. Proposed section 3474.10(b) would establish an application procedure for a history of timely payments determination. This section would allow a lessee or successful bidder to apply for a history of timely payments determination and it

specifies the information required in an application.

For leases issued before the establishment of the history of timely payments application process, a lessee can file an application for a history of timely payments determination at any time. In the case of a lease modification, the lessee could apply for a history of timely payments determination only after the lessee and BLM have agreed upon the fair market value for the lease modification. For new leases that are sold competitively, the successful bidder can apply for a history of timely payments determination only after the BLM provides written notification to the successful bidder that the BLM has accepted its bonus bid as the fair market value for the coal tract. This section would also list what must be included in a history of timely payments application. When making a determination of a history of timely payments, the BLM would rely on existing 43 CFR 3400.0-5(rr)(3) (redesignated in this rule as 43 CFR 3400.0-5(b)) in determining whether a lease is controlled by or under common control with the history of timely payments applicant.

d. Proposed paragraph (c) would establish the basis for a determination of a history of timely payments. The BLM proposes to base its determination on the applicant's payment history for the 5 years immediately preceding an application for a determination of a history of timely payments for all Federal coal leases that are: (1) encompassed by an LMU boundary or SMCRA mining permit boundary; and (2) under the control of the applicant during the 5-year period. The 5-year period and the inclusion of adjoining or nearby leases would reasonably reflect the business unit of a mine and therefore the applicant's willingness and ability to pay the deferred bonus payments on time.

The proposed rule would provide that if the applicant has less than 5 years of payment history, or there is not an adjoining mine under the applicant's control, the BLM may consider the nationwide payment history of an applicant's corporate owner and affiliates under common control with the applicant. If the applicant, or the applicant's corporate owner or affiliates under common control with the applicant, do not have a 5-year history of payments for a Federal coal lease, the applicant will not meet the criteria to apply for a history of timely payments determination.

The rule would make it clear that to satisfy the history of timely payments requirement, every non-contested production royalty, advance royalty, and deferred bonus bid payment during the 5-year period must have been paid in full on or before the date the payment was due. Contested payments, as identified by the ONRR, may be considered if the lessee or mine operator provides an assurance of full payment to the satisfaction of the ONRR. Partial payment or nonpayment would not satisfy this requirement unless the lessee or mine operator has also provided an assurance of full payment to the satisfaction of the ONRR.

e. Proposed section 3474.10(d) provides an informal process for resolving disputes over the applicant's payment history. If the ONRR informs the BLM that the applicant does not satisfy the criteria for a history of timely payments determination, before the BLM makes a final determination, the BLM would notify the applicant, and provide the applicant 30 days to resolve any differences between the applicant and the ONRR regarding the payment history.

f. Proposed section 3474.10(e) provides that if the applicant satisfies the criteria for a history of timely payments determination, the BLM will make a written history

of timely payments determination that will be effective for the leases covered by the application until the deferred bonus is paid in full. The proposed rule also provides that, if the applicant does not satisfy the criteria for a history of timely payments determination, the BLM will reject the application and immediately require either: (1) a separate bond in an amount equal to one deferred bonus payment; or (2) an increase in an existing bond that is equal to the amount of one deferred bonus payment. If the lessee/operator does not timely pay the deferred bonus bid, it will result in cancellation of the history of timely payments determination, and the BLM would immediately require either: (1) a separate bond in an amount equal to one deferred bonus payment; or (2) an increase in an existing bond that is equal to the amount of one deferred bonus payment.

g. Proposed section 3474.10(f) would establish procedures, as required by the EPAct, for lease termination in the event that a lessee fails to pay a deferred bonus bid installment within 10 days after the BLM gives the lessee notice that a bonus bid installment is past due. These procedures would be in addition to any other legal or equitable remedies available to BLM in the event of a lessee's breach of its obligations under the lease.

13. Proposed section 3474.11 would authorize lessees/operators to post a bond for an LMU in lieu of individual lease bonds for the coal leases in the LMU, if the LMU bond satisfies the requirements for the individual lease bonds it would replace.

I. Section-By-Section Analysis of 43 CFR Subpart 3480 – Coal Exploration and Mining Operations Rules: General

1. The BLM proposes to remove the numbered paragraph designations (1)

through (36) from paragraph 3480.0-5(a) and arrange the definitions in alphabetical order. Paragraphs (i) through (iv) of the definition of "coal reserve base" would be redesignated as paragraphs (1) through (4), respectively. This conforms to Federal Register style preferences.

2. The BLM is proposing to clarify the definition of "continued operation" at section 3480.0-5(a). The proposed changes in this definition will make it clear that the continued operation requirement can be met by either: (1) the production of the required commercial quantities (CQ) of coal in any continued operation year; or (2) beginning in the third continued operation year, the cumulative production for 3 consecutive continued operation years (the continued operation year in question and the 2 preceding continued operation years) of an amount of coal greater than or equal to the cumulative CQ requirement for that 3-year period.

This definition is consistent with the LMU Guidelines, which provided a similar method for determining the amount of coal for which the advance royalty must be paid. The definition provides an alternative to actual production of CQ during every continued operation year to comply with the continued operation requirement. Consistent with current BLM policy, this proposed definition would allow an operator to credit a year with coal production from a lease of 3 percent or more of the recoverable coal reserves (3 times the annual CQ requirement defined at section 3480.0-5) toward compliance with the continued operation requirement for the subsequent 2-year period, even if coal is not mined from the lease during the subsequent 2-year period. For example, beginning in the third continued operation year and assuming that the annual CQ requirement (1 percent of the recoverable coal

reserve) is 1 million tons, the continued operation requirement can alternatively be satisfied for the third continued operation year, and the payment of advance royalties avoided, by the cumulative production of at least 3 million tons of coal at any time during the 3-year period that includes the first, second, and third continued operation years. Similarly, the continued operation requirement for the fourth continued operation year could be satisfied by the cumulative production of at least 3 million tons of coal at any time during the 3-year period that includes the second, third, and fourth continued operation years.

3. The proposed rule would amend the definition of "diligent development period" by redesignating the subordinate paragraphs to be consistent with the alphabetical organization of definitions within section 3480.0-5.

J. Section-By-Section Analysis of 43 CFR Subpart 3482 – Exploration and Resource Recovery and Protection Plans

1. Before August 8, 2005, the MLA required coal lessees to submit an operation and reclamation plan within 3 years after the lease was issued (30 U.S.C. 207(c)). This provision of the prior law was implemented in the regulations at section 3482.1(b), requiring submission of an R2P2 (the BLM's terminology for what the MLA calls an operation and reclamation plan). Section 435 of the EPAct eliminated this 3-year requirement in favor of a requirement for the submission of a plan prior to any action which might cause a significant disturbance of the environment. The BLM is proposing to remove 3 sentences in this section that implemented the 3-year provision of the prior law. Few, if any, consequences attach to the removal of the 3-year deadline. Under the proposed rule, the BLM would continue to require an

approved R2P2 before a lessee may conduct any development or mining operations on a Federal coal lease. Further, detailed operation and reclamation plans continue to be required to obtain a Federal coal mining permit under the SMCRA.

2. The BLM is proposing to remove two additional sentences from section 3482.1(b). The third sentence of this section provides that the BLM will review an R2P2 for completeness and compliance with the MLA. This sentence is self-evident and is redundant with detailed MLA requirements for an R2P2 that are listed in section 3482.1(c). Therefore, we are proposing to delete the third sentence in this section. The BLM is also proposing to delete the seventh sentence in this section which provides that an R2P2 submitted, but not approved as of August 30, 1982, must be revised to comply with the rules as modified as of August 30, 1982 (47 FR 33154 - 195). The BLM is not aware of any R2P2 submitted before August 30, 1982, but not yet approved, that would need to be revised as provided by this sentence. Therefore, we are proposing to delete the seventh sentence of this section.

3. The BLM proposes to add a new paragraph (b) in section 3482.3 that would reference the LMU mapping requirements found at existing section 3487.1(i) (redesignated as section 3487.8(a), with a new section heading).

K. Section-By-Section Analysis of 43 CFR Subpart 3483 – Diligence Requirements

1. Section 434 of the EPAct, amending 30 U.S.C. 207(b), provides for several changes in the processes for application, assessment, and collection of advance royalties for Federal coal leases. The proposed rule is modeled on the BLM's interim guidance concerning this section of the EPAct (BLM-WO-IM-2006-127 (March 24,

2006)).

a. The BLM proposes to revise section 3483.3(a)(2) by moving the authority to stop accepting advance royalties in lieu of continued operation, upon 6 months' notification to the lessee or LMU operator, to new paragraph 3483.4(h). Section 3483.3(a)(2) would be modified to include a reference to new paragraph 3483.4(h). This is an administrative action that will consolidate regulations relative to advance royalty under section 3483.4.

b. The general conditions for paying advance royalty would be contained in section 3483.4(a). Under proposed section 3483.4(a)(1), the BLM could authorize the payment of advance royalty in lieu of continued operation for a lease or LMU if:

(1) Coal was not produced in sufficient quantity from the lease or LMU during a continued operation year to satisfy the continued operation requirement of the lease or LMU;

(2) The aggregate number of continued operation years for accepting advance royalties, as determined under section 3483.4(e), has not been exceeded; and

(3) The BLM determines that payment of advance royalty in lieu of continued operation will serve the public interest.

c. Under proposed section 3483.4(a)(2), the continued operation requirement for a lease or an LMU for a continued operation year could be met by a combination of coal production and payment of advance royalty. Also, proposed section 3483.4(a)(3) would make the lessee responsible for paying advance royalty for a lease that is not within an LMU and the LMU lessee/operator responsible for paying advance royalty for an LMU.

d. Under the MLA, as amended by the EPAct, after a lessee has achieved diligent development, there are no statutory restrictions regarding when, during a continued operation year, the lessee must apply to pay advance royalty in lieu of continued operation. Under existing section 3483.4, applications to pay advance royalty made more than 30 days after the beginning of a continued operation year for the payment of advance royalty during the same continued operation year are subject to late payment charges. Because the provisions for calculation of the advance royalty payment in Section 434 of the EPAct provide for coal values to be determined at the end of a continued operation year, proposed section 3483.4(b) would require the operator to apply to pay advance royalty any time during the continued operation year. Proposed section 3483.4(b) would also provide that failure to apply to pay advance royalty within the continued operation year to which the advance royalty applies may result in: (1) assessment of late payment penalties; (2) failure to qualify for a new lease or the transfer of an existing lease as specified in section 3472.1-2(e); or (3) cancellation of the lease consistent with section 3483.2(c).

e. Proposed section 3483.4(c) would provide that the value of coal for advance royalty purposes is established in applicable ONRR companion regulations.

f. Proposed section 3483.4(d) would address the royalty rate used for the calculation of advance royalty. It provides that the royalty rate specified in the lease document will be used for calculation of advance royalty for a lease. For LMUs, it would provide that the advance royalty rate is 8 percent where the Federal recoverable coal reserves in the LMU will be recovered only by underground mining operations, and not less than 12½ percent where the Federal recoverable coal reserves

contained in the LMU will be recovered by mining operations other than an underground mine. For an LMU that contains Federal recoverable coal reserves that are recovered by a combination of underground and other mining methods, the royalty rate for calculation of advance royalty would be not less than 12½ percent.

g. Proposed section 3483.4(e) would increase from 10 to 20 the aggregate number of years for which an operator/lessee may pay advance royalty, as required by Section 434 of the EPAct. It would also describe how the BLM will determine how many and which years count for advance royalty purposes both for leases and LMUs.

h. A section heading, "Failure to pay advance royalty," would be added to proposed section 3483.4(f), which has been redesignated from section 3484.4(f) of the current regulations.

i. Under proposed section 3483.4(g)(1), if the BLM authorizes the payment of advance royalty for a lease or LMU, the BLM would determine at the end of a continued operation year the amount of coal, measured in tons, for the ONRR to use to calculate the value of the advance royalty payment.

j. Under section 3483.4(g)(2), the calculation of advance royalty tonnage would include both 1- and 3-year methods, based on the definition of "continued operation" in section 3480.0-5. During the first 2 continued operation years, the BLM would use the 1-year calculation method to determine the advance royalty tonnage for a lease. Beginning in the third continued operation year, the BLM would use both methods, and would provide to the ONRR the lower of the two tonnage amounts. The ONRR would then determine the value of the advance royalty payment. The maximum advance royalty tonnage for any continued operation year for a lease would not

exceed the required CQ for the lease.

For LMUs, the calculation methods would recognize that an LMU may consist of both Federal and non-Federal coal. In determining advance royalty tonnages for LMUs, a proportional reduction would be made to the advance royalty tonnage to account for the recoverable coal reserves in Federal coal leases as a percentage of the overall recoverable coal reserves of the LMU.

The following example depicts how the advance royalty tonnage would be calculated for 9 consecutive years for an LMU containing both Federal and non-Federal coal. The advance royalty tonnage is calculated using both the 1- and 3-year methods.

For this example, assume the LMU contains a total of 100,000,000 tons of recoverable coal reserves, 75,000,000 tons of which are from Federal coal leases and 25,000,000 are from non-Federal lands. The CQ requirement for the LMU is 1,000,000 tons per year of which 750,000 tons per year is required by the Federal coal leases in the LMU (see existing 43 CFR 3480.0-5(a)(6)). Further assume that the LMU produced 1,000,000 tons in each of the continued operation years (COYs) 1 and 2; 5,000,000 tons in COY3; nothing in COY 4; 500,000 tons and 1,800,000 tons in COY5 and COY6, respectively; 800,000 tons in COY7; and 200,000 tons and 300,000 tons, respectively, in COYs 8 and 9. The determination of when advance royalty is required and the advance royalty tonnage is summarized in Table 1, below:

Table 1 — Example of Advance Royalty Tonnage Calculations

Thousands of tons unless noted otherwise	Continued Operation Year (COY)								
	1	2	3	4	5	6	7	8	9
CQ for Federal	750	750	750	750	750	750	750	750	750

Reserves in the LMU									
CQ Requirement for the LMU	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
CQ Ratio (Federal CQ tons per LMU CQ ton)	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
Total Coal Production from the LMU	1,000	1,000	5,000	0	500	1,800	800	200	300
1-Year Advance Royalty Calculation Method									
1-Year LMU CQ Deficiency (LMU CQ Less Total LMU Production)(c)	0	0	0	1,000	500	0	200	800	700
1-Year Advance Royalty Tonnage for the LMU(d)	0	0	0	750	375	0	150	600	525
3-year Advance Royalty Calculation Method									
3-year Cumulative LMU CQ	(a)	(b)	3,000	3,000	3,000	3,000	3,000	3,000	3,000
3-year Total LMU Production	(a)	(b)	7,000	6,000	5,500	2,300	3,100	2,800	1,300
3-year CQ Deficiency (3-year Total LMU Production Less 3-year Cumulative LMU CQ)(e)	(a)	(b)	0	0	0	700	0	200	1,700
3-year Advance Royalty Tonnage for the LMU(f)	(a)	(b)	0	0	0	525	0	150	1,275
Advance royalty is payable on the lesser of the 1-year or 3-year method.									
Tonnage on which Advance Royalty Must Be Paid(g)	0	0	0	0	0	0	0	150	525

(a) Advance royalty cannot be paid based on a 3-year average during the first year after achieving continued operation (see existing 43 CFR 3480.0-5(a)(8)).

(b) Advance royalty cannot be paid based on a 3-year average during the second year after achieving continued operation (see existing 43 CFR 3480.0-5(a)(8)).

(c) LMU CQ requirement less total LMU production. If the answer is zero or negative, no advance royalty is due. Values greater than zero represent the amount of additional coal production that would be required to meet the annual LMU CQ requirement.

(d) The 1-year advance royalty is calculated by multiplying the 1-year LMU CQ Deficiency by the CQ ratio.

(e) The 3-year cumulative total LMU production is subtracted from the 3-year cumulative LMU CQ. If the answer is zero or negative, no advance royalty is due. Values greater than zero represent the amount of additional coal production that would be required to meet the annual LMU CQ requirement.

(f) The 3-year advance royalty is calculated by multiplying the 3-year LMU CQ Deficiency by the CQ ratio of Federal to non-Federal coal.

(g) Advance royalty is paid on the lesser of the 1-year advance royalty tonnage for the LMU or the 3-year advance royalty tonnage for the LMU.

The 3-year advance royalty test can only be used beginning in the third continued operation year, and therefore in this example it is not applicable to continued operation years 1 and 2. In this example, advance royalty for the LMU is not due for

continued operation years 1 through 7 because the advance royalty tonnage from either the 1-year or 3-year advance royalty methods is zero. The LMU in this example, and the Federal coal leases included in the LMU, would be considered in compliance with the continued operation requirement for COY 1 through 7. However, advance royalty for the LMU is due in continued operation year 8 because both the 1-year and 3-year advance royalty tests result in an advance royalty tonnage of greater than zero. The advance royalty tonnage in continued operation year 8 is 150,000 tons, which represents the result from the 3-year advance royalty test (150,000 tons), which is less than the result from the 1-year advance royalty test (600,000 tons). Similarly, advance royalty is also due in continued operation year 9 because both the 1-year and 3-year advance royalty tests result in an advance royalty tonnage of greater than zero. The advance royalty tonnage in continued operation year 9 is 525,000 tons, which represents the result from the 1-year advance royalty test (525,000 tons), which is less than the result from the 3-year advance royalty test (1,275,000 tons). The LMU in this example, and the Federal coal leases included in the LMU, would be considered in compliance with the continued operation requirement for COY 8 and 9 only after the required advance royalty has been paid.

While this example illustrates the advance royalty calculation for an LMU, it also applies to an individual Federal coal lease by making the CQ ratio equal to 1 (i.e., 100 percent Federal coal) and using the corresponding production and CQ values for the individual lease.

k. The BLM proposes to add a new paragraph at 3483.4(h) concerning BLM's authority to stop accepting advance royalties in lieu of continued operation, upon 6

months' notification to the lessee or LMU operator. This provision is being moved from 3483.3(a)(2) as an administrative action so that regulations relative to advance royalty are located under section 3483.4.

2. The BLM proposes to amend section 3483.6(a) by adding a sentence to provide that the production of non-Federal coal from an LMU may be credited toward the diligent development requirements of the LMU only if such production occurs after the BLM approves inclusion of the non-Federal resources within the LMU. This issue was addressed in Carbon Tech Fuels, Inc., 161 IBLA 147 (April 13, 2004), a case in which the Interior Board of Land Appeals upheld the BLM's refusal to credit non-Federal coal production for LMU diligence purposes where such production occurred before the non-Federal coal resources were included in the LMU.

There are two reasons why the BLM proposes to adopt the provision to allow crediting of non-Federal production only after the resources are in the LMU. First, the BLM is unable to verify the tonnages produced from non-Federal resources before inclusion in the LMU; and second, the MLA encourages the diligent production of Federal coal. Allowing the crediting of production of non-Federal coal resources that may have occurred years earlier would not encourage diligent development of the Federal coal today and might provide an avenue to avoid production of Federal coal, as occurred in the Carbon Tech Fuels case.

3. The proposed rule would amend section 3483.6(b) by removing the reference to the submission date for R2P2s. A new paragraph (c) would be added to section 3483.6 addressing the relationship of LMU continued operation requirements to lease-specific continued operation requirements. The proposed rule would require

that the LMU continued operation requirement be satisfied independently of whether the Federal coal leases within the LMU produce sufficient coal to meet the individual continued operation requirements that would apply if the leases were not in an LMU.

L. Section-By-Section Analysis of 43 CFR Subpart 3487 – Logical Mining Unit

1. The proposed rule would divide section 3487.1(b) into three subordinate paragraphs to make the provision easier to follow. The proposed rule would also add the 40-year LMU term to the list of uniform requirements that apply to all pre-August 4, 1976, Federal leases that would be included in an LMU.

2. The proposed rule would redesignate existing section 3487.1(c) as proposed section 3487.2 and reorganize it. Redesignated section 3487.2(b) (currently section 3487.1(c)(2)) would be amended to require a complete description of all lands, Federal, state, and private, that are to be in an LMU. This provision was previously in the LMU Guidelines, 50 FR at 35148 and 35149.

3. Existing section 3487.1(c)(3) would be expanded in redesignated section 3487.2(c) to include a list of specific information required to demonstrate that the applicant for an LMU has effective control of all coal within the LMU boundary. This provision was previously in the LMU Guidelines, 50 FR at 35149.

4. Existing section 3487.1(c)(4) (new paragraph 3487.2(d)) would be revised to cross reference the requirements for submittal of an R2P2 that are found at section 3482.1. This paragraph is revised to structure the LMU application requirements consistent with Section 435 of the EPAct.

5. The proposed rule would redesignate existing section 3487.1(d)(1) as section

3487.3(a) and revise the section to be consistent with Section 433 of the EPAct that allows the term of an LMU to be extended beyond the current maximum term of 40 years. The proposed rule also makes editorial changes in this paragraph.

6. Existing section 3487.1(e)(1) would be amended in proposed redesignated section 3487.4(a) by removing the requirement for submission of an R2P2 within 3 years after the effective date of the LMU approval. This is parallel to the lease-specific R2P2 requirements enacted by Section 435 of the EPAct. The proposal would provide that an LMU applicant must submit an R2P2 containing the information required by section 3482.1(c) for all Federal and non-Federal lands within the LMU, before the LMU or LMU modification would be approved. This earlier submission of the R2P2 would provide a basis for the BLM to decide whether to approve an LMU. The proposal also provides that the BLM will adjust the estimates of an LMU's recoverable coal reserves at the time of approving the R2P2.

7. Similarly, the criteria for establishing the beginning date for the initial 40-year term of an LMU found at existing section 3487.1(g)(6) is proposed to be amended in proposed section 3487.4(e) to be consistent with Section 435 of the EPAct. The proposal would begin the initial 40-year term of the LMU through two alternatives. First, if coal is actively being mined from the LMU when the LMU is established, the initial 40-year LMU term would begin on the effective date of the LMU. Alternatively, if coal is being produced when the LMU becomes effective, the initial 40 year term of the LMU would begin whenever coal is first produced from any part of the LMU.

8. In proposed sections 3487.5(c) and 3487.7(a), corresponding to existing

sections 3487.1(f)(3) and (h)(1), respectively, the BLM proposes to correct an error that appears twice in the regulations. The proposed rule would remove both references in the text that make it appear that the BLM consults with itself. The proposed rule would require, in new paragraph (g) of redesignated section 3487.5 (see existing section 3487.1(f)), submission of the R2P2 before the LMU or LMU modification is approved in order to establish a basis for the agency's approval of the LMU or LMU modification.

9. Existing section 3487.1(g) is proposed to be redesignated as section 3487.6 with a new section heading of "LMU decision."

10. The BLM is proposing to add a new section 3487.7(d) to allow a change in the LMU recoverable coal reserve to be effective either when the BLM approves an LMU modification, or when the BLM determines that the LMU recoverable coal reserves have changed due to new geologic information. The LMU Guidelines required that a change in the LMU recoverable coal reserve for LMUs that had achieved diligent development be effective beginning on the first day of the next LMU continued operation year. In contrast, the diligent development or continued operation status of the LMU would not be relevant in determining whether or not to change the LMU recoverable coal reserve.

Under the existing rules, advance royalty is determined at the beginning of a continued operation year. If the LMU recoverable coal reserve were to change during the continued operation year, there would be a need for a corresponding adjustment to the LMU continued operation requirement, and as needed, the advance royalty payment if advance royalty was paid.

A constant LMU recoverable coal reserve throughout a continued operation year, and thereby a fixed LMU continued operation requirement, is no longer required because, consistent with the provisions of 30 U.S.C. 207(b)(4), which codify amendments made by the EPAct, the BLM is proposing to change the period for determining advance royalty from the beginning of the year to run through to the end of the continued operation year. See proposed section 3483.4(b). Only the LMU recoverable coal reserve, and thereby the LMU continued operation requirement, that is in effect at the end of the continued operation year, will be used to determine the tonnage upon which advance royalty is due. Thus, the BLM is proposing to simplify the regulations.

11. The BLM is proposing to add a new section 3487.7(e) similar to existing section 3487.1(h)(4) to make it clear that an LMU modification will not extend the initial 40-year period of an LMU. It would also cross-reference section 3487.10, which would implement Section 433 of the EPAct by providing procedures for extending an LMU beyond the current maximum term of 40 years.

12. Existing section 3487.1(i) is proposed to be redesignated as section 3487.8 with a new section heading of "LMU operations."

13. The BLM is proposing a new section 3487.9 to provide specific standards and procedures for termination of an LMU. Proposed section 3487.9(a)(5) would be modified from the provisions in the LMU Guidelines to be consistent with Section 433 of the EPAct. The BLM is also proposing a new provision that states that any Federal coal lease in an LMU would continue under the terms and conditions of the lease if the LMU is terminated or relinquished. These provisions were previously in

the LMU Guidelines, 50 FR at 35157.

14. Section 433 of the EPAct amends 30 U.S.C. 202a(2) and allows the Secretary of the Interior (Secretary) to extend the term of an LMU to more than the 40 years previously allowed, if specific conditions are met. The statute provides that a 40-year LMU mine-out period may be extended to a longer period if:

(1) The extension will ensure the maximum economic recovery of the coal deposit; or

(2) The longer period is in the interest of the orderly, efficient, or economic development of a coal resource.

These standards differ somewhat from the MLA's standards for the initial approval of an LMU. Initially, a proposed LMU must meet the standards of maximum economic recovery; orderly, efficient, and economical development; and "due regard to conservation of coal reserves and other resources." 30 U.S.C. 202a(1). As amended by Section 433 of the EPAct, the MLA provides that an extension need only meet one of the first two standards for initial approval.

Under proposed section 3487.10, the operator/lessee of an LMU would be required to apply to the BLM for an extension of the LMU term and provide documentation concerning how the request complies with either of the two approval criteria noted above. To ensure that the LMU continues to promote the maximum economic recovery of Federal and non-Federal resources, the BLM is proposing that the term of an LMU be extended in increments of 10 years or less. The BLM selected a period of 10 years to provide a reasonable amount of time for recovery of coal from the LMU while not overly burdening the LMU operator/lessee. Increments of 10

years or less also would ensure continued BLM review of the circumstances surrounding the LMU operation. A lessee or LMU operator would be allowed to apply for repeated extensions of its LMU. Since passage of the EPAct, the BLM has approved one LMU extension for a period of 10 years.

III. Procedural Matters.

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is a significant regulatory action.

The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities.

The change in the royalty rate for highwall mining is the most significant proposed provision that would likely increase the cost associated with the development of some Federal coal resources. Since 1998, highwall mining has been used to mine an estimated 6 million tons of Federal coal at seven different mines with an estimated difference in royalty value between the underground royalty rate and the surface royalty rate of nearly $7.3 million. The average annual total production since 1998 is about 588,000 tons per year and the average difference in royalty value for the same period is about $662,000 per year. The BLM estimates an average annual cost difference of $662,000, depending on the quantity of coal produced using highwall mining techniques.

With one exception, Federal royalties for coal severed by highwall mining have been assessed at the surface mining royalty rate of 12½ percent. One coal company elected to pay royalties at the underground royalty rate of 8 percent. In 2006, the Minerals Management Service (now the ONRR) and this coal company entered into a settlement agreement tolling the statute of limitations for payment of royalties until the BLM determines the applicable royalty rate. If BLM determines the applicable royalty rate for highwall mining is greater than the underground royalty rate of 8 percent, the agreement provides that the coal company will pay the difference in royalties between what was paid at the underground rate, and the royalty rate established by the BLM. The coal company also agreed to waive appeal rights. Therefore, if the BLM concludes that the surface royalty rate of 12½ percent is applicable to coal severed by highwall mining methods, there would be no practical effect on royalty receipts.

This proposed rule would implement new processing fees of $170 per application for applications to pay advance royalty, and $170 per application to extend an LMU, and $160 per application for applications to apply for a history of timely payments determination (that will lead to a decision not to consider the remaining deferred bonus payments in the total bond requirement of a lease). These fees are included in Table 4, under the heading "Paperwork Reduction Act." The other proposed provisions that implement the EPAct, including lease modification acreage, approval of LMUs, payment of advance royalties, lease operation and reclamation plan, and bonding for deferred bonus bids, will potentially reduce the cost of maintaining Federal coal leases by making administrative actions more

efficient. The BLM notes that any change in costs to the regulated community from changes in the way advance royalty is valued will be addressed by the ONRR. Any cost savings are, however, case-specific. It is highly unlikely the savings would exceed the threshold established by the Executive Order.

The proposed rule also includes several technical corrections to the regulations that will be solely administrative.

1. The rule will not create inconsistencies with other agencies' actions. It will not change the relationships of the BLM to other agencies and their actions. We have closely coordinated with the ONRR in developing this proposed rule.

2. The rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.

3. The rule will implement the EPAct by amending the coal management regulations to conform to it. See parts II.A. and B. of the SUPPLEMENTARY INFORMATION discussed earlier in this preamble. However, the change in the royalty rate for highwall mining, which would be codified at 43 CFR 3473.3-2(a), may raise novel policy issues. That provision would continue the current 8 percent royalty rate for coal recovered from underground mines, and establish that a minimum royalty rate of 12½ percent would apply to coal recovered by any other extraction method.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5

U.S.C. 601 et seq.). The Small Business Administration (SBA) has two standards that apply to Federal coal. The first standard is found at 13 CFR 121.201 and provides that in the coal industry a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies with fewer than 500 employees. The second standard, 13 CFR 121.509, applies to Federal coal leasing (see companion BLM regulations at 43 CFR 3420.1-3(b)(2)) and provides that an entity is considered a small business if:

- Together with its affiliates, the entity has no more than 250 employees;
- The entity maintains management and control of the actual mining operations of the Federal coal tract; and
- Agrees that if the entity subleases the Government land, it will be to another small business, and that it will require its sublessors to agree to the same.

The BLM has elected to use the SBA standard found at 13 CFR 121.201 that includes all firms with fewer than 500 employees. The BLM selected this standard for its analysis because the collection of firms identified as having 500 or fewer employees will include all the firms that meet the other standard. Thus, by using the 500-employee standard, the BLM has completed this analysis with the more inclusive standard.

Based on national data, the preponderance of firms involved in developing coal are small entities as defined by the SBA. However, this proposed rule would affect only those firms leasing and developing coal resources on Federal lands, and the makeup of current Federal coal lessees does not reflect that of the overall industry. This disparity between the composition of the overall industry and that of

the subset of the industry that holds Federal leases likely reflects the type of mine development occurring in the West where most of the Federal leasing occurs. Much of the coal currently being produced from Federal lands is from extremely large deposits that favor large-scale, capital-intensive development, and requires a large workforce. Therefore, because the changes proposed apply primarily to western lease and LMU operations, it appears that this rule would not affect a substantial number of small entities.

In addition to determining whether a substantial number of small entities are likely to be affected by this rule, the BLM must also determine whether the rule is anticipated to have a significant economic impact on those small entities. All of the proposed provisions will apply to lessees or mine operators regardless of size. The proposed changes to the lease modification acreage, approval of payment of advance royalties, and lease operation and reclamation plans will not subject lessees or mine operators to any new costs. In addition, large competitors would not gain any advantage over small entities due to these proposed provisions.

The proposed changes in bonding for deferred bonus bids would not increase the costs to current and future lessees. Lessees that have a history of timely payments to the government are allowed to make deferred bonus payments without providing the agency a bond. This benefit would apply to all qualified Federal coal lessees. However, in certain situations, the provision could give existing lessees that have a history of timely payments a competitive advantage over lessees or prospective lessees, including those that are small entities, that either do not have a history of timely payments or that have not held a Federal coal lease long enough to establish a

history of timely payments. An entity that does not need to bond for its deferred bonus bid will have lower costs than those entities that must pay to provide the BLM with the requisite bond.

Where this advantage would be most acute would be in the competitive bidding for a lease associated with a new coal mining operation. Prospective lessees would be competing for the right to lease the tract through the competitive sale process that requires bidding a bonus value for the lease. An entity without a payment history would have higher acquisition costs than those entities that qualify to defer a bond for future bonus bid payments. The development of a new coal mine is not, however, a common scenario. There have only been 3 leases, out of 59 leases that the BLM issued in the past 10 years, which were associated with the development of a new coal mine.

Any disadvantage small entities may face due to this provision is mitigated by the availability of the small business leasing opportunity provided under 43 CFR 3420.1-3(b)(2). This regulation provides special leasing opportunities for small businesses, where only small entities are allowed to bid on Federal coal leases. Larger competitors, who may have a competitive advantage, are not allowed to bid for these coal tracts set aside for small businesses.

Proposed section 3473.3-2 would set the royalty rate for highwall coal mining at 12½ percent. Proposed section 3483.4(d) would address the royalty rate that would be used for the calculation of advance royalty, setting it at 12½ percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered by mining operations other than underground mining. These proposed provisions would

increase costs to a limited number of operators. As of this analysis, 7 operations have or are employing highwall mining technology on Federal lands, and all 7 companies are not considered small entities as defined by the SBA. At some point in the future, a small entity may incorporate highwall mining into its operation. The operator would be subject to the higher royalty rate, but it would be the same rate large competitors would pay.

Based on the available information, we conclude that the proposed rule would not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act (SBREFA). This rule will not have an annual effect on the economy of $100 million or more. As explained under the preamble discussion concerning Executive Order 12866, Regulatory Planning and Review, clarification of the royalty rate for non-underground mining may increase the annual cost associated with the development of specific Federal coal resources by an estimated average of $662,000 per year. However, as all federal coal lessees have paid, or have agreed to pay, royalties consistent with this proposed rulemaking, there is no practical economic impact. Further, the prospective increased cost is limited to specific mining conditions that are only found within a few mines, none of which have operators that qualify as small business entities. Therefore, the proposed clarification in royalty rates will have no effect on small business.

This rule proposes to implement new processing fees for applications to pay advance royalty, extend an LMU, and to avoid providing a bond for deferred bonus payment. These proposed fees would total an estimated $2,690 per year.

The other proposed provisions that implement the EPAct, including lease modification acreage, approval of LMUs, payment of advance royalties, lease operation and reclamation plan, and bonding for deferred bonus bids, would potentially reduce the cost of maintaining Federal coal leases by making the administration of the coal program more efficient. The BLM notes that any changes in costs to the regulated community from changes in the way advance royalty is valued will be addressed by the ONRR. Any cost savings are, however, case-specific. It is highly unlikely the savings would exceed the threshold established by SBREFA. This rule:

- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and
- Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we find that:

- This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.
- This rule will not produce a Federal mandate of $100 million or greater in any

single year.

The rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes proposed in this rule would not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the BLM finds that the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a compensable taking.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role of or responsibilities among Federal, state, and local governmental entities. It does not relate to the structure and role of the states or have direct, substantive, or significant effects on states.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we have found that a portion of this proposed rule may include policies that have Tribal implications. The proposed rule would make changes to the coal management regulations, 43 CFR parts 3000, 3400, 3430, 3470, and 3480. As noted below, some of the provisions of 43 CFR part 3480 are applicable to "Indian lands." Under the regulations of the Bureau of Indian

Affairs, the term "Indian lands" includes Tribal lands. See 25 CFR 211.3, 212.3, and 225.3.

The Bureau of Indian Affairs regulations at 25 CFR 211.4, 212.4, and 225.1(c) incorporate, through an explicit cross-reference, the BLM regulations at 43 CFR part 3480 and thus, unless expressly exempted, the provisions contained in part 3480 apply to Indian lands. The BLM coal management regulations at 43 CFR parts 3400 through 3470, are not similarly incorporated by cross reference, are not applicable to Indian lands, and thus, proposed amendments to regulations in parts 3000, 3400, 3430, and 3470 are not subject to Tribal consultation.

The BLM regulations at 43 CFR 3480.0-4 further provide that the provisions of part 3480 relating to advance royalty, diligent development, continued operation, maximum economic recovery, and LMUs do not apply to Indian lands, leases, and permits. Thus, the proposed amendments contained in this rule to 43 CFR subpart 3483, Diligence Requirements, and subpart 3487, Logical Mining Unit, are excluded from Tribal consultation. The proposed definitions of "continued operation" and "diligent development period" are similarly excluded from Tribal consultation. A proposed amendment to add a new paragraph (h) to section 3482.3 is not subject to Tribal consultation, because the proposed paragraph would be specifically limited in its application to LMUs.

As noted above, the BLM regulations at 43 CFR subpart 3482 would be generally applicable to Indian lands unless otherwise specifically exempted, as noted above for proposed section 3482.3. Since 43 CFR 3482.1(b) is not similarly specifically exempted from applicability to Indian lands, proposed regulatory

amendments to that provision would be applicable to Indian lands if adopted by the BLM. Accordingly, this portion of the proposed rule would be a policy that could have Tribal implications.

Inasmuch as proposed amendments to 43 CFR 3482.1(b) may have Tribal implications by reason of its potential applicability to Indian lands, the BLM will begin consultation with potentially affected Tribes upon publication of the proposed rule. Further, the BLM will continue to consult with Tribes during the comment period of the proposed rule.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, we find that the proposed rule would not unduly burden the judicial system, and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with the Department of the Interior's Office of the Solicitor throughout the rule making process.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed rule would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources. The rule would properly accommodate local participation in the Federal decision-making process, and would provide that the programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

This proposed rule contains information collection requirements that are

subject to review by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 - 3520). Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

The OMB has approved the existing information collection requirements associated with coal management, and has assigned control number 1004-0073 to those requirements.

The BLM has requested OMB approval, under a new control number, for:

- Modifications of some of the existing information collection requirements currently approved under control number 1004-0073; and
- New information collection requirements.

After promulgating a final rule and receiving approval from the OMB, the BLM intends to request that the new control number be combined with existing control number 1004-0073. Therefore, the BLM intends that, over the long term, all of the information collection requirements and burdens associated with coal management will be authorized under control number 1004-0073.

Both types of proposed changes are described below along with estimates of the annual burdens. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

Title: Coal Management Revisions (43 CFR Parts 3000 and 3400 through 3480).

OMB Control Number: 1004-XXXX.

Abstract: Provisions of this proposed rule that would affect coal management information collections are described below. The burdens and effects of these provisions are itemized at Tables 2 through 5, below.

1. The proposed rule would add 3 new fixed processing fees to 43 CFR 3000.12. One of these new fees would be $170 for each Request for Payment of Advance Royalty in Lieu of Continued Operation (43 CFR subpart 3483). The OMB has approved this collection activity under control number 1004-0073, but has not yet approved the processing fee. The other proposed processing fees would be for the following new information collection requirements:

- $160 per response for each Application for History of Timely Payments Determination (Proposed 43 CFR 3474.10); and
- $170 per response for each Application to Extend an LMU Beyond the Initial 40-Year Period (Proposed 43 CFR 3487.10).

A complete discussion of how the amounts of these 3 fees were determined is in the preamble of this proposed rule.

2. The BLM proposes new 43 CFR 3474.10, which would require a lessee or mine operator to submit an application in order to seek a determination of a history of timely payments. It would be necessary for a lessee or mine operator to obtain such a determination from the BLM in order to obtain a waiver of the bond requirement for deferred bonus bid installment payments. In accordance with Section 436 of the EPAct, the BLM may grant (or will grant, in the case of leases issued after August 8, 2005) such a waiver only after determining, in consultation with the ONRR, that the

lessee has a history of timely payments of non-contested royalties, advance royalties, and bonus bid installment payments. As indicated at proposed section 3474.10(b), an applicant for a history of timely payments determination would have to submit to the BLM two copies of the following information:

- The name, address, and phone number of the applicant and the applicant's primary contact person;
- Identification of the lease or leases for which the applicant requests a surety bond or other financial guarantee waiver for deferred bonus bid installment payments;
- Identification of the surety bonds or other financial guarantee instruments, if applicable, that the applicant desires to reduce or discontinue;
- The serial numbers and names of the lessee(s) of record of all Federal coal leases that constitute the basis for a history of timely payments determination under paragraph (c) of this section and sufficient documentation to demonstrate that the Federal coal leases are under the control of the lessee(s) of record;
- The SMCRA permit number and mine name or the LMU serial number and LMU name that are controlled by or under common control with, as defined in section 3400.0-5(b) of this chapter, the history of timely payments applicant, and that adjoin the leases identified in paragraph (b)(2)(ii) of this section; and
- Any other information requested by the BLM.

The BLM estimates it would take 8 hours to complete a history of timely payments application, and there would be on average three such applications per year. As noted above, the BLM is proposing a new processing fee of $160 for an application for a history of timely payments determination. The BLM has decided

not to develop a specific form to apply for a history of timely payments determination.

3. Section 433 of the EPAct provides that the Secretary may extend the term of an LMU beyond the 40th year. The BLM proposes new 43 CFR 3487.10, which would provide for applications to extend the term of an LMU beyond the initial 40-year period in increments of 10 years or less.

An application to extend an LMU term beyond the initial 40-year period must provide sufficient information for the BLM to determine whether the extension complies with the provisions at proposed section 3487.5(b)(1) or proposed § 3487.5(b)(2).

The text of proposed section 3487.5(b)(1) appears in the existing coal management regulations as 43 CFR 3487.1(f)(2)(i), which requires respondents to show that mining operations on the LMU would achieve maximum economic recovery of Federal recoverable coal reserves within the LMU.

The text of proposed section 3487.5(b)(2) appears in the existing coal management regulations at 43 CFR 3487.1(f)(2)(ii), which requires respondents to show that mining operations on the LMU would facilitate development of the coal reserves in an efficient, economical, and orderly manner.

The BLM does not intend to develop a specific form for applications to extend the term of an LMU beyond the initial 40-year period. As noted above, the BLM proposes to assess a $170 processing fee for each application. The BLM estimates the public burden hours for an application to extend an LMU to be 5 hours per response, and anticipates one response per year.

4. Section 435 of the EPAct eliminated the requirement for the lessee or mine operator to provide the BLM with an operations and reclamation plan under the MLA, as amended (30 U.S.C. 207(c)), within 3 years of lease issuance. However, the MLA still requires that an operations and reclamation plan be approved by the Secretary before mining begins (see 43 CFR 3482.1(b)). The BLM implements this statutory requirement with its regulatory requirement of a resource recovery and protection plan (R2P2).

The BLM proposes to remove from section 3482.1(b) the requirement to submit a 3-year R2P2. This proposal would have the effect of adjusting the public burden downward (from 980 responses to 975 annually) for the information collection activity titled, "Resource Recovery and Protection Plans (43 CFR Part 3480, Subpart 3482)."

5. The BLM proposes to re-designate existing section 3487.1(c)(2) as new section 3487.2(b), and codify a provision of the LMU Guidelines that has required a description of other mineral interests within the LMU as a part of the LMU application. This proposal would aid the BLM in making a determination that the LMU applicant has the right to enter and mine coal from all the lands proposed to be within an LMU. Since the quantity and quality of the information varies depending to a great extent on the geographic location of the LMU, the BLM will not develop a specific form to report this information. The BLM estimates this requirement would add an average of 5 public burden hours to each of the two anticipated LMU applications per year.

As required by the Paperwork Reduction Act at 44 U.S.C. 3507(d), the BLM has submitted an information collection request to the OMB for review. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the information collection displays a current OMB control number.

We invite the public and other Federal agencies to comment on any aspect of the reporting burden through the information collection process. You may submit comments on the information collection burdens directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax (202-395-5806), or oira_submission@omb.eop.gov. Please indicate "Attention: OMB Control Number 1004-XXXX." If you submit comments on the information collection burdens, you should provide the BLM with a copy of your comments (see **ADDRESSES**), so that we can summarize all written comments and address them in the preamble to the final rule.

The estimated hour burdens of this proposed rule are itemized in Tables 2 and 3, and the estimated processing fees are itemized in Table 4.

Table 2 — Estimated Hour Burdens for Proposed Information Collection Changes: New Collection Activities

A. Proposed Change	B. Estimated Number of Responses Annually	C. Estimated Hours Per Response	D. Estimated Hour Burden (Column B x Column C)
Application for History of Timely Payments Determination (New 43 CFR 3474.10)	3	8	24

A. Proposed Change	B. Estimated Number of Responses Annually	C. Estimated Hours Per Response	D. Estimated Hour Burden (Column B x Column C)
Application to Extend an LMU Beyond the Initial 40-Year Period (New 43 CFR 3487.10)	1	5	5

Table 3 — Estimated Hour Burdens for Proposed Information Collection Changes: Revisions of Existing Collection Activities

A. Proposed Change	B. Estimated Number of Responses Annually	C. Estimated Hours Per Response	D. Estimated Hour Burden (Column B x Column C)
Removal of "3-year R2P2" Requirement from "43 CFR Part 3480, Subpart 3482 Resource Recovery and Protection Plans" (Revised 43 CFR 3482.1(b))	975 (5 fewer responses than in the IC currently authorized under control number 1004-0073)	20	19,500 (100 fewer hours than in the IC currently authorized under control number 1004-0073)
Revision of "43 CFR Part 3840, Subpart 3487 Application for Formation or Modification of Logical Mining Unit" (Revision of 43 CFR 3487.1(c)(2) and re-designation as 43 CFR 3487.2(b))	2 (Same as the number of responses in the IC currently authorized under control number 1004-0073)	175 (5 hours more than in the IC currently authorized under control number 1004-0073)	350 (10 more than in the IC currently authorized under control number 1004-0073)

Table 4 — Proposed Processing Fees

A. Proposed Change	B. Estimated Number of Responses Annually	C. Estimated Fee for Each Response	D. Total Estimated Fees Annually (Column B x Column C)
New Processing Fee for New IC: Application for History of Timely Payments Determination (New 43 CFR 3474.10)	3	$160	$480
New Processing Fee for Existing IC: Request for Payment of Advance Royalty in Lieu of Continued Operation\ (Revised 43 CFR subpart 3483)	12	$170	$2,040
New Processing Fee for New IC: Application to Extend an LMU Beyond the Initial 40-Year Period (New 43 CFR 3487.10)	1	$170	$170
Totals	16		$2,690

The BLM is requesting comments by the public on these proposed changes to:

(a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The OMB is required to make a decision concerning the collection of

information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication. This does not affect the deadline for the public to comment to the BLM on the proposed rule.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA), BLM's January 2008 NEPA Handbook H-1790-1, and 516 DM 1 through 4 and 11. We have prepared an Environmental Assessment (EA) and have concluded that this rule would not have a significant impact on the quality of the human environment under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C), and therefore an Environmental Impact Statement is not required. The EA is available for review at the address specified under **ADDRESSES**.

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

This proposed rule would amend the BLM's coal management regulations and therefore might have an effect on the supply of coal. The effect of each provision is discussed separately as follows:

- The proposed rule would implement the Federal coal provisions of the EPAct by amending existing regulations. These amendments include: increasing the maximum acreage for a lease modification from 160 acres to 960 acres; new

procedures for extending the life of an LMU beyond 40 years; changes in the procedures and standards for payment of advance royalty for leases and LMUs; elimination of the requirement to submit an R2P2 within 3 years after lease issuance or establishment of an LMU; and changes in procedures and standards for bonds that are used to ensure payment of the remaining balance of deferred bonus bids. All of these changes are administrative in nature and do not have a direct impact on the cost or supply of energy. However, as these changes may reduce the administrative cost to hold a Federal coal lease, they likewise might indirectly help to increase energy supplies by helping enable otherwise uneconomic resources to be recovered.

- Portions of the LMU Guidelines (published in the Federal Register on August 29, 1985) are no longer consistent with the statute as amended by the EPAct. The BLM is therefore proposing a formal withdrawal of the LMU Guidelines and proposing to incorporate into the regulations those parts of the guidelines that remain valid, to the extent those parts of the LMU Guidelines that are not currently in regulations. The LMU Guidelines are administrative in nature and do not directly affect the supply of energy. Hence, the BLM anticipates no net change in energy supplies from this action.

- The BLM is proposing to make it clear that a royalty rate of 12½ percent will be assessed on all Federal coal except coal that is mined from underground mines. The proposed rule will define underground mines as mine workings where personnel work with undisturbed earth directly overhead and that have authorization from MSHA for personnel to work underground. We expect no net change in the quantity of coal that is developed from mines that are not underground mines, such as auger or

continuous highwall mining operations, which are conducted on Federal coal leases.

Information Quality Act

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Public Law Number 106-554). In accordance with the Information Quality Act, the Department of the Interior has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at DOI's website at http://www.doi.gov/ocio/iq.html.

Author

The principal author of this proposed rule is William Radden-Lesage, Mining Engineer, Solid Minerals Division, assisted by Jean Sonneman, Division of Regulatory Affairs, Washington Office, BLM, and Harvey Blank, Office of the Solicitor, Department of the Interior.

List of Subjects

43 CFR part 3000

Public lands-mineral resources.

43 CFR part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands-mineral resources.

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.

43 CFR part 3480

Government contracts, Intergovernmental relations, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Tommy P. Beaudreau
Acting Assistant Secretary of the Interior
Land and Minerals Management

For the reasons stated in the preamble, and under the authorities listed below, parts 3000, 3400, 3430, 3470, and 3480, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are proposed to be amended as follows:

PART 3000 – MINERALS MANAGEMENT: GENERAL

1. The authority citation for part 3000 continues to read as follows:

AUTHORITY: 16 U.S.C. 3101 et seq.; 30 U.S.C. 181 et seq., 301-306, 351-359, and 601 et seq.; 31 U.S.C. 9701; 40 U.S.C. 471 et seq.; 42 U.S.C. 6508; 43 U.S.C.

1701 et seq.; and Pub. L. 97-35, 95 Stat. 357.

2. Section 3000.12 is amended by adding, in the table in paragraph (a), after the fee for coal lease or lease interest transfer, three new fixed fees for processing applications for particular coal actions to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) * * *

Document/action	**FY 2013 Fee**
* * * * *	* *
Coal (parts 3400, 3470)	
* * * * *	* *
History of timely payments application	160
Advance royalty application	170
Logical mining unit extension application	170
* * * * *	* *

* * * * *

PART 3400 – COAL MANAGEMENT: GENERAL

3. The authority citation for part 3400 continues to read as follows:

AUTHORITY: 30 U.S.C. 189, 359, 1211, 1251, 1266, and 1273; and 43 U.S.C. 1461, 1733, and 1740.

4. Section 3400.0-3 is amended by adding paragraphs (a)(10) and (11) to read as follows:

§ 3400.0-3 Authority.

(a) * * *

(10) The Energy Policy Act of 1992 (Pub. L. 102-486).

(11) The Energy Policy Act of 2005 (Pub. L. 109-58).

* * * * *

5. Amend § 3400.0-5 by:

a. Revising the introductory text and redesignating it as paragraph (a) introductory text;

b. Removing the lettered paragraph designations (a) through (qq) and arranging the definitions in alphabetical order;

c. Adding a definition of "Underground mine" to paragraph (a) in alphabetical order; and

d. Redesignating paragraph (rr) as paragraph (b).

The revision and addition read as follows:

§ 3400.0-5 Definitions.

(a) As used in parts 3400 through 3480 of this chapter:

* * * * *

Underground mine means, for purposes of establishing the royalty rate under the terms of a coal lease, an excavation in the earth for the purpose of severing coal in which persons routinely work in an environment where undisturbed earth is directly overhead and where roof control and ventilation plans are approved by the Mine Health and Safety Administration, Department of Labor, to allow persons to work in areas where undisturbed earth is directly overhead.

* * * * *

6. Add § 3400.7 to read as follows:

§ 3400.7 Information collection.

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in parts 3400 through 3480 of this chapter in accordance with 44 U.S.C. 3507, and has assigned the requirements Control Number 1004-0073.

(b) Respondents are coal mining applicants, lessees, licensees, and operators. The information collection requirements in these parts are in accordance with the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), the Energy Policy Act of 2005 (Pub. L. 109-58), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351-359), and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.). A response may be mandatory, voluntary, or required in order to obtain or retain a benefit.

(c) The Paperwork Reduction Act of 1995 requires the BLM to inform the public that an agency may not conduct or sponsor, and the public is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding any aspect of the collection of information under these parts, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C Street, N.W., Washington, D.C. 20240.

PART 3430—NONCOMPETITIVE LEASES

7. 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

8. Section 3432.0-3 is amended by revising paragraph (b) to read as follows:

§ 3432.0-3 Authority.

* * * * *

. (b) These regulations primarily implement Section 3 of the Mineral Leasing Act of 1920, as amended, by:

(1) Section 13 of the Federal Coal Leasing Amendments Act (FCLAA) of 1976 (30 U.S.C. 203); and

(2) Section 432 of the Energy Policy Act of 2005 (Pub. L. 109-58).

9. Section 3432.1 is amended by removing the second sentence of paragraph (a) and adding paragraph (c) to read as follows:

§ 3432.1 Application.

* * * * *

(c) The acreage added to the lease by modification after August 4, 1976, must not exceed the lesser of 960 acres or the acreage of the lease when the lease was issued.

10. Section 3432.2 is amended by revising paragraph (c) as follows:

§ 3432.2 Availability.

* * * * *

(c) The lands applied for shall be added to the existing lease without competitive bidding. The United States shall receive the fair market value of the lands added to a lease either by cash bonus payment or by deferred bonus payments

as provided at section 3422.4(c).

Subpart 3435—Lease Exchange

11. Section 3435.3-5 is amended by revising the last sentence to read as follows:

§ 3435.3-5 Notice of public hearing.

* * * Any notice of the availability of an environmental assessment or draft environmental impact statement on the exchange may be used to comply with this section.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

12. The authority citation for part 3470 is revised to read as follows:

AUTHORITY: 30 U.S.C. 189, 207, and 359; and 43 U.S.C. 1733 and 1740.

Subpart 3473—Fees, Rentals, and Royalties

13. Amend § 3473.2 by adding paragraphs (h), (i), and (j) to read as follows:

§ 3473.2 Fees.

* * * * *

(h) An application for a history of timely payments determination must include payment of the filing fee found in the fee schedule in § 3000.12 of this chapter.

(i) An application to pay advance royalty in lieu of continued operation must include payment of the filing fee found in the fee schedule in § 3000.12 of this chapter.

(j) An application for a 10-year extension to the term of a logical mining unit

must include payment of the filing fee found in the fee schedule in § 3000.12 of this chapter.

14. Amend § 3473.3-2 by revising paragraph (a) to read as follows:

§ 3473.3-2 Royalties.

(a)(1) Except as provided in paragraph (a)(2), a lease shall require payment of a royalty of not less than 12½ percent of the value of the coal recovered. Among other methods, the royalty rate established under this paragraph shall apply to all coal recovered by surface mining, highwall mining systems, including auger mining, continuous highwall mining and other similar systems where personnel do not work in an underground mine.

(2) A lease shall require payment of a royalty of 8 percent of the value of the coal recovered from an underground mine.

(3) The Office of Natural Resources Revenue (ONRR) determines the value of the coal recovered from a mine in accordance with the regulations set forth at 30 CFR part 206, subpart F.

* * * * *

Subpart 3474—Bonds

15. Amend § 3474.1 by revising the section heading and paragraph (b) and by removing paragraph (c).

The revisions read as follows:

§ 3474.1 Acceptable bonds.

* * * * *

(b) For exploration licenses, a bond shall be furnished in accordance with

§ 3410.3-4 of this chapter.

16. Revise section 3474.2 to read as follows:

§ 3474.2 Filing requirements for bonds.

(a) The applicant or bidder must file the lease bond in the proper office within 30 days after receiving notice. The lease bond must be furnished on a form approved by the BLM.

(b) The BLM may approve a brief extension to the filing requirement when the applicant or bidder experiences delays in securing a bond that are beyond the control of the applicant or bidder.

(c) The BLM will issue a new lease or lease modification only after a lease bond or other financial surety has been submitted to the proper BLM office, found adequate by the BLM, and accepted.

§§ 3474.3 through 3474.6 [Redesignated as §§ 3474.5 through 3474.8]

17. Redesignate §§ 3474.3 through 3474.6 as §§ 3474.5 through 3474.8, respectively.

18. Add new § 3474.3 to read as follows:

§ 3474.3 Required amount of the bond.

Except as provided in § 3474.5, the authorized officer will determine the amount of the required bond. The bond must be sufficient to cover the cumulative amount of 1 year's rental, 3 months of production royalty or 1 year's advance royalty, 1 annual deferred bonus payment, and 100 percent of the cost of reclamation for exploration licenses or exploration on leases not yet in a Surface Mining Control and Reclamation Act (SMCRA) mining permit. The required bond amount must be at

least $5,000.

19. Add new § 3474.4 to read as follows:

§ 3474.4 Review and adjustment of bond amount.

The bond for a lease, exploration license, or license to mine will be reviewed at regular intervals, or as changes in conditions warrant, to assure that the bond amount remains appropriate under §3474.3 of this part. This review may result in the amount of a bond being modified upward or downward.

20. Revise newly redesignated § 3474.5 to read as follows:

§ 3474.5 Bond Release.

After consultation with the Office of Surface Mining Reclamation and Enforcement, the authorized officer may release the amount of any outstanding bond which is related to, and is not necessary to secure, the performance of reclamation within a permit area.

21. Revise newly redesignated § 3474.6 to read as follows:

§ 3474.6 Qualified sureties.

The Financial Management Service of the Department of the Treasury annually publishes in the Federal Register a list of companies that hold certificates of authority from the Secretary of the Treasury and are, therefore, acceptable sureties for Federal bonds. The BLM will accept bonds only from sureties with current certificates of authority from the Secretary of the Treasury.

22. Amend newly redesignated § 3474.8 by adding two sentences at the end to read as follows:

§ 3474.8 Termination of the period of liability.

* * * The surety or other bond provider remains responsible for obligations that accrued during the period of liability while the bond was in effect and until such liability is released by the BLM. An existing lease bond or other financial surety must remain in effect until another bond or other financial surety is filed and accepted as a replacement.

23. Add § 3474.9 to read as follows:

§ 3474.9 Consolidated lease bonds.

An operator/lessee may combine the bond requirements for all the leases that it holds and that are within the boundary of a single mine permit into a single consolidated lease bond. The amount of the consolidated lease bond will be equal to the combined amount of the bond requirements for all of the leases within the mine permit boundary.

24. Add § 3474.10 to read as follows:

§ 3474.10 Bonds for deferred bonus.

(a) Introduction to history of timely payments. (1) For Federal coal leases issued before August 8, 2005, the BLM may waive the bond requirement for deferred bonus bid installment payments if the BLM determines, in consultation with the Office of Natural Resources Revenue (ONRR), that the lessee has a history of timely payments of non-contested royalties, advance royalties, and bonus bid installment payments.

(2) For leases and lease modifications issued after August 8, 2005:

(i) The BLM will not require a surety bond or other financial assurance to guarantee payment of deferred bonus bid installment payments if the BLM

determines, in consultation with the ONRR, that the lessee or successor in interest has a history of timely payments. If the BLM determines that the lessee does not have a history of timely payments, the lease or modified lease may be issued only if an amount sufficient to cover one annual deferred bonus payment is added to the lease bond, logical mining unit bond, or consolidated lease bond.

(ii) When a lease or a lease modification is issued based upon the lessee providing a lease bond that includes one annual deferred bonus payment, the BLM will reduce the lease bond requirement for that lease or lease modification by an amount equal to one deferred bonus payment, if:

(A) At a later date the lessee submits a new history of timely payments application and the BLM determines that the lessee has a history of timely payments that is in compliance with this subpart; or

(B) The deferred bonus for the lease or lease modification has been paid in full.

(b) Application requirements for a history of timely payments determination. (1) A lessee or successful bidder may apply for a history of timely payments determination.

(i) A current lease holder may apply for a history of timely payments determination at any time.

(ii) In the case of a lease modification, the lessee may apply for a history of timely payments determination only after the lessee and the BLM have agreed upon the fair market value for the lease modification.

(iii) For new leases, the successful bidder may apply for a history of timely

payments determination only after the BLM provides written notification to the successful bidder that the BLM has accepted its bonus bid as the fair market value for a coal tract that was offered for competitive sale.

(2) You must submit to the BLM two copies of a written application for the history of timely payments determination. The application must include:

(i) The name, address, and phone number of the applicant and the applicant's primary contact person;

(ii) Identification of the lease or leases for which the applicant requests a surety bond or other financial guarantee waiver for deferred bonus bid installment payments;

(iii) Identification of the surety bonds or other financial-guarantee instruments, if applicable, that the applicant desires to reduce or discontinue;

(iv) The serial numbers and names of the lessee(s) of record of all Federal coal leases that constitute the basis for a history of timely payments determination under paragraph (c) of this section and sufficient documentation to demonstrate that the Federal coal leases are under the control of the lessee(s) of record;

(v) The SMCRA permit number and mine name or the LMU serial number and LMU name that are controlled by or under common control with, as defined in § 3400.0-5(b) of this chapter, the history of timely payments applicant, and that adjoin the leases identified in paragraph (b)(2)(ii) of this section; and

(vi) Any other information requested by the BLM.

(3) Any confidential data in the application must be marked consistent with § 3481.3 of this chapter.

(4) The applicant may aggregate into one history of timely payments application all leases or lease modifications that have a portion of their bonus payments deferred only if all the leases or lease modifications are within the same boundary, as described in paragraph (c)(1) of this section.

(c) Basis for a history of timely payments determination. (1) The BLM will base its history of timely payments determination on the applicant's payment history for the 5 years immediately preceding a history of timely payments application for all Federal coal leases that are:

(i) Encompassed by an adjoining LMU boundary or SMCRA mining permit boundary; and

(ii) Under the control of the history of timely payments applicant during the 5-year period.

(2) If the applicant has less than 5 years of payment history, or there is not an adjoining mine as provided in paragraph (c)(1) of this section, the BLM may consider the nationwide payment history of an applicant's corporate owner and affiliates under common control with the applicant.

(3) If the history of timely payments applicant, or the applicant's corporate owner or affiliates under common control with the applicant, does not have a 5-year history of payments for a Federal coal lease, the applicant cannot qualify for a history of timely payments determination.

(4) To satisfy the history of timely payments requirement, every non-contested production royalty, advance royalty, and deferred bonus bid payment during the 5-year period must have been paid in full on or before the date the payment

was due. Contested payments may be considered if the lessee or mine operator has provided an assurance of full payment to the satisfaction of the ONRR. Partial payment or nonpayment does not satisfy this requirement unless the lessee or mine operator has also provided an assurance of full payment to the satisfaction of the ONRR.

(d) Resolution of disputed payment history. If the ONRR informs the BLM that the applicant does not satisfy the criteria for a history of timely payments determination, before the BLM makes a final determination, the BLM will notify the applicant and provide the applicant 30 days to resolve any differences in the payment history between the applicant and ONRR.

(e) The history of timely payments determination. (1) If the applicant satisfies the criteria for a history of timely payments determination, the BLM will make a written history of timely payments determination that will be effective for all leases covered by the application until the deferred bonus is paid in full in accordance with the terms and conditions of the leases.

(2) If the applicant fails to satisfy the criteria for a history of timely payments determination, the BLM will reject the application, and will immediately require:

(i) A separate bond in an amount equal to one deferred bonus payment; or

(ii) An increase in an existing bond amount that is equal to the amount of one deferred bonus payment.

(3) Failure to make a timely deferred bonus bid payment will result in cancellation of the history of timely payments determination and the BLM will immediately require:

(i) A separate bond in an amount equal to one deferred bonus payment; or

(ii) An increase in an existing bond amount that is equal to the amount of one deferred bonus payment.

(f) Lease termination for failure to pay a deferred bonus bid installment. (1) The BLM will provide written notice to the lessee that an annual deferred bonus bid payment is past due. The notice will demand that the lessee, within 10 days beginning on the date of receipt of the notice, remit full payment of the deferred bonus payment or provide evidence**,** to the satisfaction of the BLM, to demonstrate that the deferred bonus payment was previously made.

(2) If the lessee provides the BLM with evidence to demonstrate that the full amount of the past due bonus payment was paid either before receipt or within 10 days after receipt of the notice under paragraph (f)(1) of this section, the BLM will review all submitted evidence and, in consultation with the ONRR, determine whether full payment was made.

(i) If the BLM concludes that the lessee paid the deferred bonus bid payment either before receipt or within the 10 days after receipt of the notice under paragraph (f)(1) of this section, the BLM will notify the operator/lessee of this conclusion and the lease will not terminate.

(ii) If the BLM concludes that the lessee did not pay the deferred bonus bid payment either before receipt or within 10 days after receipt of the notice under paragraph (f)(1) of this section, the BLM will notify the lessee that the lease is terminated.

(3) If the lessee does not respond within 10 days after receipt of the notice

under paragraph (f)(1) of this section, the BLM will consult with the ONRR to confirm that the past due bonus payment was not made within 10 days after receipt of the notice under paragraph (f)(1) of this section, and, upon confirmation, will notify the lessee that the lease is terminated as a matter of law.

(4) If a lease is terminated under paragraph (f)(2) or (f)(3) of this section, any bonus payments made to United States with respect to the lease:

(i) Will not be returned to the lessee; and

(ii) Cannot be credited to any future coal lease sale.

25. Add § 3474.11 to read as follows:

§ 3474.11 Logical Mining Unit (LMU) bonds.

(a) Upon approval of an LMU (subpart 3487 of this chapter) the LMU operator may, in lieu of individual lease bonds for each Federal coal lease in the LMU, furnish and maintain an LMU bond. In addition to all the lease bond requirements in this subpart, an LMU bond must also comply with the following specific LMU bond requirements:

(1) The amount of the LMU bond must be sufficient to cover all of the lease bond obligations for all Federal leases within the LMU; and

(2) All LMU bonds must be in an amount not less than that specified by the BLM.

(b) The BLM will review the amount of the LMU bond at regular intervals to ensure that the LMU bond continues to meet the bond requirements of all the Federal coal leases in the LMU.

(c) When an LMU is terminated, the period of liability under the LMU bond

continues until the remaining Federal coal leases that were in the LMU are covered by individual lease bonds in the manner prescribed by the BLM.

PART 3480 – COAL EXPLORATION AND MINING OPERATIONS RULES

26. The authority citation for part 3480 continues to read as follows:

AUTHORITY: 30 U.S.C. 189, 359, 1211, 1251, 1266, and 1273; and 43 U.S.C. 1461, 1733, and 1740.

Subpart 3480 – Coal Exploration and Mining Operations Rules: General

27. Amend section 3480.0-5 by:

a. Removing from paragraph (a) the numbered paragraph designations (1) through (36) and arranging the definitions in alphabetical order; and

b. Revising the definitions of "continued operation" and "diligent development period" to read as follows:

§ 3480.0-5 Definitions.

(a) * * *

Continued operation means the annual production of at least commercial quantities of recoverable coal reserves following the achievement of diligent development. An operator/lessee may achieve continued operation in any continued operation year by producing at least commercial quantities of coal from a lease or LMU during the continued operation year. Beginning in the third continued operation year, the operator/lessee may alternatively achieve continued operation if its cumulative coal production from a lease or LMU during the continued operation year in question and the 2 preceding continued operation years (a total of 3 continued

operation years) is equal to or greater than the sum of the commercial quantities for the same continued operation years. Advance royalty may be paid, with approval from the BLM, in lieu of continued operation (43 CFR subpart 3483).

* * * * *

Diligent development period means:

(i) For Federal leases, a 10-year period that begins on either:

(A) The effective date of the Federal lease for Federal leases issued on or after August 4, 1976; or

(B) The effective date of the first lease readjustment after August 4, 1976, for Federal leases issued before August 4, 1976;

(ii) For LMUs, a 10-year period that begins on either:

(A) The effective date of the most recent Federal lease issued or readjusted before LMU approval; or

(B) The effective date of the LMU, if the LMU contains a Federal lease issued before August 4, 1976, that has not been readjusted after August 4, 1976; and

(iii) For Federal coal leases and LMUs, the diligent development period terminates at the end of the royalty reporting period in which the production of recoverable coal reserves in commercial quantities was achieved, or at the end of 10 years, whichever occurs first.

* * * * *

Subpart 3482 – Exploration and Resource Recovery and Protection Plans

28. Amend § 3482.1 by revising paragraph (b) to read as follows:

§ 3482.1 Exploration and resource recovery and protection plans.

* * * * *

(b) Resource recovery and protection plans. (1) Before conducting any development or mining operations on a Federal lease or under a license to mine under part 3440 of this chapter, the operator/lessee must:

(i) Submit and obtain approval of a resource recovery and protection plan from the BLM; and

(ii) Submit a permit application package under 30 CFR 740.13 to the Office of Surface Mining Reclamation and Enforcement or to the state regulatory authority under a Federal/state cooperative agreement entered into under 30 CFR part 745, containing, among other documents, the operator/lessee's resource recovery and protection plan and the BLM's approval of the resource recovery and protection plan.

(2) A resource recovery and protection plan for an LMU must be submitted to the BLM as provided in § 3487.2(d).

* * * * *

29. Amend § 3482.3 by adding paragraph (h) to read as follows:

§ 3482.3 Mining operations maps.

* * * * *

(h) Logical mining unit maps. Maps for logical mining units must conform to the applicable parts of this section and the requirements at § 3487.8(a).

Subpart 3483 – Diligence Requirements

30. Amend § 3483.3 by revising paragraph (a)(2) to read as follows:

§ 3483.3 Suspension of continued operation or operations and production.

(a) * * *

(2) The authorized officer may suspend the requirement for continued operation upon the payment of advance royalty in accordance with §3483.4(h) of this title.

* * * * *

31. Amend section 3483.4 by:

a. Revising paragraphs (a), (b), and (c);

b. Removing paragraph (e) and (f);

c. Redesignating paragraphs (d) and (g) as paragraphs (e) and (f), respectively;

d. Adding new paragraph (d);

e. Revising redesignated paragraph (e);

f. Adding a paragraph heading to newly redesignated paragraph (f); and

g. Adding new paragraphs (g) and (h).

The revisions and additions read as follows:

§ 3483.4 Payment of advance royalty in lieu of continued operation.

(a) Conditions for payment of advance royalty. (1) The BLM may authorize the payment of advance royalty in lieu of continued operation for a lease or LMU if:

(i) Coal has not been produced in sufficient quantity from the lease or LMU during a continued operation year to satisfy the continued operation requirement of the lease or LMU;

(ii) The aggregate number of continued operation years for accepting advance royalties, as determined under paragraph (e) of this section, has not been exceeded;

and

(iii) The BLM determines that payment of advance royalty in lieu of continued operation will serve the public interest.

(2) The continued operation requirement for a lease or an LMU for a continued operation year may be met by a combination of coal production and payment of advance royalty.

(3) The lessee is responsible for paying advance royalty for a lease that is not within an LMU, and the LMU lessee/operator is responsible for paying advance royalty for an LMU.

(b) Application to pay advance royalty. (1) An operator/lessee's application to pay advance royalty in lieu of the continued operation requirement for a specific continued operation year must be received by the BLM during the same specified continued operation year.

(2) Failure to apply to pay advance royalty in lieu of continued operation within the continued operation year to which the advance royalty will apply will result in the following:

(i) The BLM recommending that the ONRR assess late payment penalties for the period between the last day of the continued operation year to which the advance royalty will apply and the date that the application to pay advance royalty in lieu of continued operation is actually received;

(ii) The operator/lessee may not qualify to obtain rights to another existing or new lease as described at § 3472.1-2(e); or

(iii) Cancellation of the lease as provided at § 3483.2(c).

(c) Calculation of coal value for advance royalty purposes. For advance royalty purposes, the value of the Federal coal will be calculated by ONRR in accordance with applicable regulations.

(d) Royalty rate used for calculation of advance royalty. (1) The royalty rate specified in the lease document will be used for calculation of advance royalty for a lease.

(2) The advance royalty rate for an LMU is 8 percent where the Federal LMU recoverable coal reserves contained in the LMU will be recovered only by underground mining operations and not less than 12½ percent where the Federal LMU recoverable coal reserves contained in the LMU will be recovered by mining operations other than underground mining. For an LMU that contains Federal LMU recoverable coal reserves that are recoverable by a combination of underground and other mining methods, the advance royalty rate is not less than 12½ percent.

(e) Allowable number of years to pay advance royalty. (1) The aggregate number of continued operation years during which the BLM may accept advance royalty in lieu of continued operation for a Federal coal lease or LMU may not exceed 20. For any continued operation year when advance royalty is paid in lieu of continued operation, regardless of the amount of the advance royalty paid, the BLM will count such continued operation year against the 20-year maximum number of continued operation years for which advance royalty may be paid.

(2)(i) When an LMU is formed, the BLM will determine the maximum number of continued operation years for which advance royalty in lieu of continued operation during the term of the LMU may be accepted. Subsequent modification of

the LMU does not change this number. The number of continued operation years for which the BLM may approve an LMU operator to pay advance royalty in lieu of continued operation is equal to number of continued operation years for the Federal coal lease in the LMU that has the greatest number of remaining continued operation years. For example, if an LMU is formed that contains two Federal coal leases. One Federal coal lease has 20 remaining continued operation years for which the BLM will accept advance royalty, and the other Federal coal lease has already paid advance royalty for 7 continued operation years, with 13 additional continued operation years for which the BLM will accept advance royalty. In this example, the LMU would have a maximum of 20 continued operation years for which the BLM may accept advance royalty.

(ii) A continued operation requirement that has been met by the payment of advance royalty in lieu of continued operation for a Federal lease before the lease's inclusion in an LMU will be credited to the LMU's continued operation requirement. However, the advance royalty paid in lieu of continued operation will be credited to the LMU only if it has not already been credited against production royalty for the Federal lease as provided at 30 CFR part 1218.

(f) Failure to pay advance royalty. * * *

(g) Tonnage basis for advance royalty payment. (1) Determination of the tonnage base. If the payment of advance royalty has been authorized by the BLM for a lease or LMU, the BLM will determine at the end of a continued operation year the amount of coal, measured in tons, which the ONRR will use to calculate the value of the advance royalty payment. The amount of coal that the BLM determines and

authorizes as the basis for paying advance royalty for a continued operation year is called the advance royalty tonnage.

(2) Calculation methods for a lease. During the first 2 continued operation years, the BLM will use a 1-year calculation method to determine the advance royalty tonnage for a lease, as described in paragraph (g)(2)(i) of this section. The BLM will provide the advance royalty tonnage information to the ONRR for determining the value of the advance royalty payment. Beginning in the third continued operation year, the BLM will use two calculation methods to determine the advance royalty tonnage for a lease. The tonnage derived from the calculation method that results in the lesser tonnage will then be provided to the ONRR for determining the value of the advance royalty payment. The maximum advance royalty tonnage for any continued operation year will not exceed the commercial quantities amount for the lease. The two calculation methods are:

(i) The 1-year method. The advance royalty tonnage is determined by subtracting the amount of coal actually produced from a lease during the continued operation year from the commercial quantities amount for the lease for the same continued operation year.

(ii) The 3-year method. The advance royalty tonnage is determined by adding the amount of coal produced from a lease during a continued operation year for which payment of advance royalty is authorized to the amount of coal produced in each of the 2 previous continued operation years and subtracting that amount from the sum of the annual commercial quantities amounts for the lease for the same 3 continued operation years.

(3) Calculation methods for an LMU. The BLM will use two calculation methods to determine the advance royalty tonnage for an LMU, except that the calculation of advance royalty tonnage will be prorated to reflect the percentage of the total LMU recoverable coal reserves that are Federal recoverable coal reserves. The BLM will provide to the ONRR the tonnage derived from the calculation method that results in the lowest advance royalty tonnage for determining the value of the advance royalty payment. The maximum advance royalty tonnage for any continued operation year for an LMU will not exceed the sum of the commercial quantities amounts for all the Federal coal leases in the LMU. The two calculation methods are:

(i) The 1-year method. The advance royalty tonnage is determined by first subtracting the amount of coal produced from the LMU during the LMU continued operation year, including all coal production from Federal coal leases and non-Federal lands in the LMU, from the LMU commercial quantities amount for the same continued operation year. To account for the recoverable coal reserve under Federal coal leases, take the difference between the LMU commercial quantities amount and LMU production from the previous calculation and multiply that by the sum of the commercial quantities amounts for all the Federal coal leases within the LMU. This amount is then divided by the commercial quantities amount for the entire LMU.

(ii) The 3-year method. The advance royalty tonnage is determined by adding the amount of coal produced from the LMU during the continued operation year for which the payment of advance royalty is authorized and the amount of coal produced in the 2 previous continued operation years and subtracting that amount from the sum of the commercial quantities amounts for the LMU for the continued operation year

for which the payment of advance royalty is authorized and the 2 previous continued operation years. To account for the recoverable coal reserve under Federal coal leases only, take the difference between the sum of the LMU commercial quantities amounts for the 3 specified continued operation years and the cumulative actual LMU production during the same 3 years from the previous calculation and multiply that by the sum of the commercial quantities amounts for all the Federal coal leases within the LMU during the same 3 years. This amount is then divided by the sum of the commercial quantities amounts for the entire LMU during the same 3 years.

(h) Ceasing to accept advance royalties in lieu of continued operation. The authorized officer may disallow the payment of advance royalty in lieu of continued operation for a lease or LMU after giving the lessee or LMU operator 6-months' advance notice.

32. Revise § 3483.6 to read as follows:

§ 3483.6 Special logical mining unit rules.

(a) Production requirement. The BLM will apply production of either Federal or non-Federal recoverable coal reserves, or a combination thereof, from anywhere within an LMU toward satisfaction of the requirements for achieving diligent development and continued operation for the LMU. Production from non-Federal resources may be credited toward diligent development of the LMU only if such production occurs after the non-Federal resources are approved by the BLM to be included in the LMU.

(b) Diligence date. Increasing or decreasing the size of an LMU will not change the date for achieving diligent development.

(c) Relationship to lease-specific continued operation requirements. The LMU continued operation requirement must be satisfied independently of whether the Federal coal leases within the LMU produce sufficient coal to meet the individual lease's continued operation requirements that would apply if the leases were not in the LMU.

Subpart 3487 – Logical Mining Unit

33. Revise § 3487.1 to read as follows:

§ 3487.1 Logical mining units (LMU) – general considerations.

(a) An LMU shall become effective only upon approval of the authorized officer. The effective date for an LMU may be established by the authorized officer between the date that the authorized officer receives an application for LMU approval and the date the authorized officer approves the LMU. The effective date of the LMU approval shall be determined by the authorized officer in consultation with the LMU applicant. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with paragraph (g) of this section. An LMU may be diminished by creation of other separate Federal leases or LMU's in accordance with § 3487.6 of this subpart.

(b) (1) The BLM may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976.

(2) The BLM may direct, or an operator/lessee may initiate, the establishment of an LMU containing Federal coal leases issued before August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU

subject to the LMU stipulations and the regulations of this part, for:

(i) Submission of a resource recovery and protection plan;

(ii) An initial LMU term of 40 years;

(iii) Exhaustion of LMU recoverable coal reserves;

(iv) Diligent development;

(v) Continued operation;

(vi) Maximum economic recovery;

(vii) Advance royalty; and

(viii) Royalty reporting periods (but not royalty rates).

(3) The terms of a Federal lease in an LMU will be amended so that the lease terms and conditions are consistent with the stipulations required for the approval of the LMU under section 3487.4.

34. Add §§ 3487.2 through 3487.10 to read as follows:

Sec.

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3487.2 LMU application.
3487.3 LMU Consultation.
3487.4 Stipulations.
3487.5 LMU approval criteria.
3487.6 LMU decision.
3487.7 LMU modifications.
3487.8 LMU operations.
3487.9 LMU termination.
3487.10 Extension of the period of an LMU.

§ 3487.2 LMU application.

An operator/lessee must submit five copies of an LMU application to the authorized officer if the operator/lessee is applying on his own initiative to combine

lands into an LMU, or if directed to establish an LMU by the authorized officer in accordance with paragraph (b) of this section. Such application shall include the following:

(a) Name and address of the designated operator/lessee of the LMU.

(b) A list of all lands to be included in the LMU; and

(1) The names and addresses of all surface land owners that hold an interest in the lands within the LMU and the legal land description of their respective tracts;

(2) The names and addresses of all entities that hold or control an interest in the mineral rights to the land that are within the LMU, a description of the mineral rights, and the legal land description of their respective mineral rights or interests, including identification of each lease or agreement by serial number or other identifier;

(3) Identification of the coal beds proposed to be included in and excluded from the LMU;

(4) A narrative that describes and quantifies the coal reserve base, the minable reserve base, and the recoverable coal reserves within the LMU, categorized by coal bed and mineral ownership for all minable coal within the LMU boundary. The applicant must also provide a narrative describing how the minability of the coal was determined; and

(5) A narrative that describes and quantifies Federal coal that is proposed to be excluded from the LMU, including a discussion of the rationale for excluding particular coal beds or areas.

(c) Documents and related information supporting a finding of effective control of the lands to be included in the LMU.

(1) For all of the lands that are within the proposed LMU boundary, the applicant must submit copies of all of the surface owner agreements.

(2) For all of the lands within the proposed LMU that include recoverable coal reserves, the applicant must submit copies of all documents that show that the LMU applicant has effective control of the surface and the right to enter and mine.

(d) A resource recovery and protection plan that includes all lands that are proposed for inclusion in the LMU and which complies with the requirements of § 34821.

(e) Any other information required by the authorized officer.

(f) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with § 3481.3 of this title.

§ 3487.3 LMU Consultation

(a) Prior to approval, the authorized officer shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The authorized officer shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations. The BLM will also consult with the operator/lessee about Federal lease revisions to make the time

periods for resource recovery and protection plan submissions, the LMU initial 40-year term, and diligent development, continued operation, advance royalty, and Federal rental and royalty collection requirements applicable to each producing Federal lease in the LMU, consistent with the LMU stipulations.

(b) The public participation procedures of § 3481.2 of this title shall be completed prior to approval of an LMU.

§ 3487.4 Stipulations.

Prior to the approval of an LMU, the authorized officer shall notify the operator/lessee and responsible officer of the surface managing agency of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(a) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with § 3482.1(a) of this title.

(b) Uniform reporting periods for Federal rental and royalty on Federal leases.

(c) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal lease, except for Federal royalty rates, must be amended so that they are consistent with the stipulations of the LMU.

(d) Estimates of the Federal LMU recoverable coal reserves, and non-Federal

LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(e) Beginning the 40-year period in which the reserves of the entire LMU must be mined, on one of the following dates—

(1) The effective date of the LMU, if any portion of the LMU is producing on that date; or

(2) After the LMU is approved, the date coal is first produced from any portion of the LMU.

(f) Any other condition that the authorized officer determines to be necessary for the efficient and orderly operation of the LMU.

§ 3487.5 LMU approval criteria.

The authorized officer may approve an LMU if it meets the following criteria:

(a) The LMU fully meets the LMU definition.

(b) The LMU application demonstrates that mining operations on the LMU, which may consist of a series of excavations, will:

(1) Achieve maximum economic recovery of Federal recoverable coal reserves within the LMU. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(i) The amount of coal reserves recoverable from the proposed LMU compared to the amount recoverable if each lease were developed individually; and

(ii) Any other factors BLM finds relevant to this requirement;

(2) Facilitate development of the coal reserves in an efficient, economical, and orderly manner. In determining whether the proposed LMU meets this requirement,

BLM, as appropriate, will consider:

(i) The potential for independent development of each lease proposed to be included in the LMU;

(ii) The potential for inclusion of the leases in question in another LMU;

(iii) The availability and utilization of transportation and access facilities for development of the LMU as a whole compared to development of each lease separately;

(iv) The mining sequence for the LMU as a whole compared to development of each lease separately; and

(v) Any other factors BLM finds relevant to this requirement; and

(3) Provide due regard to conservation of coal reserves and other resources. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(i) The effects of developing and operating the LMU as a unit; and

(ii) Any other factors BLM finds relevant to this requirement.

(c) All single Federal leases, portions of which are included in more than one LMU, must be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land must be segregated into another Federal lease. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(d) The operator/lessee has agreed to the LMU stipulations required by the authorized officer for approval of the LMU.

(e) The LMU does not exceed 25,000 acres, including both Federal and non-

Federal lands.

(f) A lease that has not produced commercial quantities of coal during the first 8 years of its diligent development period can be included in an LMU only if at the time the LMU application is submitted:

(1) A portion of the LMU under consideration is included in a SMCRA permit approved under 30 U.S.C. 1256; or

(2) A portion of the LMU under consideration is included in an administratively complete application for a SMCRA permit.

(g) A resource recovery and protection plan for the LMU or LMU modification must be approved by the BLM at the same time as or before the LMU that it supports.

§ 3487.6 LMU decision

The authorized officer will state in writing the reasons for the decision on an LMU application.

§ 3487.7 LMU modifications.

(a) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the authorized officer after consultation with the responsible officer of the surface managing agency, or by direction of the authorized officer.

(b) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR part 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the

relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR part 3452.

(c) In considering an application for the modification of an LMU, the authorized officer must consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(d) A change in the LMU recoverable coal reserves will be effective either:

(1) When the BLM approves an LMU modification; or

(2) When the BLM determines that the LMU recoverable coal reserves have changed due to new geologic information.

(e) The 40-year period of an LMU is not extended by a modification of the LMU. The period of an LMU may only be extended by application under § 3487.10.

§ 3487.8 LMU operations.

An LMU shall be administered in accordance with the following criteria:

(a) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation, the operator/lessee shall provide a certified report of such production, as determined by the authorized officer. The certified report shall include a map showing the area mined and the amount of coal mined.

(b) Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at §§ 3483.1 through 3483.6 of this title.

(c) Operators/lessees must comply with the LMU stipulations.

§ 3487.9 LMU termination.

(a) The BLM may terminate an LMU by administrative decision if the

operator/lessee or LMU operator:

(1) Fails to comply with the LMU stipulations;

(2) Fails to submit a resource recovery and protection plan or a required resource recovery and protection plan modification:

(3) Fails to achieve diligent development within the 10-year diligent development period;

(4) Fails to maintain the LMU in continued operation or to pay advance royalty in lieu of continued operation;

(5) Fails to secure an extension of the 40-year mine out period, while continuing to sever coal beyond the 40th year of the LMU agreement;

(6) Fails to comply with other requirements of the LMU agreement, such as the requirement to pay royalty or to comply with a notice of noncompliance; or

(7) Produces all recoverable Federal coal within the LMU.

(b) The BLM will not terminate an LMU under paragraph (a) of this section unless it first provides the LMU operator/lessee and other persons with an interest in the LMU an opportunity to submit their views, together with supporting documentation, on whether the LMU should be terminated.

(c) Once an LMU is terminated, any Federal coal lease that was in the LMU will revert to the terms and conditions of the lease as if the LMU never existed.

§ 3487.10 Extension of the period of an LMU.

(a) The designated LMU operator/lessee may apply to the BLM to extend the term of an LMU beyond the initial 40-year period.

(b) An application to extend an LMU term beyond the initial 40-year period

must provide sufficient information for the BLM to determine whether the extension complies with the provisions at either § 3487.5(b)(1) or (b)(2). The BLM may require additional information from the applicant to make the determination.

(c) The BLM may approve an extension of the LMU term whenever such an extension complies with either § 3487.5(b)(1) or (b)(2).

(d) The LMU term may be extended by increments of not more than 10 years.

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