

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3500

[LLW0320000 L13300000 PP0000 20X]

RIN 1004-AE58

Non-Energy Solid Leasable Minerals Royalty Rate Reduction Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its regulations to revise the process for lessees to seek and for the BLM to grant reductions of rental fees, royalty rates, and/or minimum production requirements associated with all non-energy solid leasable minerals under 43 CFR part 3500. This final rule streamlines the process for such reductions for non-energy solid minerals leased by the Federal Government and codifies the BLM's authority to issue an area- or industry-wide reduction on its own initiative. Existing regulatory requirements are overly restrictive, inflexible, and burdensome. A report from the Senate Committee on Appropriations on the 2019 Department of the Interior, Environment, and Related Agencies Appropriations Bill encouraged the BLM to work with soda ash producers to reduce the Federal royalty rate, as appropriate. This final rule gives the BLM more flexibility to respond to changing market dynamics and to promote development of the Federal mineral estate when deemed necessary.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Lindsey Curnutt, Acting Division Chief of Solid Minerals, WO-320; 480-708-7339. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

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I. Background

Pursuant to the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181 *et seq.*, and other legal authorities, the BLM is authorized to lease deposits of certain minerals on lands owned by the United States. In addition to commonly known energy resources, such as coal, oil, and gas, the MLA authorizes the BLM to lease non-energy minerals, such as gilsonite, phosphate, sodium, potassium, and sulfur. The BLM regulations implementing this authority for solid minerals (other than coal) are found at 43 CFR part 3500 - Leasing of Solid Minerals Other than Coal and Oil Shale. As described in section 3501.2, the subject minerals are [1] “minerals other than oil, gas, coal and oil shale, leased under the mineral leasing acts”, and [2] “hardrock minerals leasable under Reorganization Plan No. 3 of 1946, on any unclaimed, undeveloped area of available public domain or acquired lands where leasing of these specific minerals is allowed by

law. Special areas identified in part 3580 of this title and asphalt on certain lands in Oklahoma also are leased under this part.” Leasing these minerals on Federal land provides valuable revenue to the states and the Federal Government.

The United States was once the leading producer in the world of one such mineral, sodium carbonate (natural soda ash), before falling behind China in 2003.¹ This change stimulated a move in Congress to provide relief to American soda ash producers. The Soda Ash Royalty Reduction Act of 2006 (SARRA) (Pub. L. No. 109-338) prescribed a reduced 2 percent royalty rate for sodium compounds produced from Federal land in the 5-year period beginning on October 12, 2006.² Additionally, the Helium Stewardship Act of 2013 (Pub. L. No. 113-40) included a provision that set a 4 percent royalty rate on soda ash for a 2-year period, which ended on October 1, 2015. These reductions have expired.

The minimum royalty rates for soda ash, along with other non-energy solid minerals on Federal lands, are set in the MLA and BLM regulations (see 43 CFR 3504.21). The MLA authorizes the Secretary to establish royalty rates higher than the minimum, along with rental fees and minimum production requirements through regulation. The BLM sets the royalty rates for each lease at or above the specified minimum royalty rate (see 43 CFR 3504.22) based on current market conditions at the time of lease issuance, but those conditions may change over the life of the lease and may be dynamic based upon global supply.

¹ Dennis S. Kostick, U.S. Geological Survey, 2005 *Minerals Yearbook: Soda Ash* 70.1 (2006).

² The SARRA required that the Department report to Congress on the impacts of the 2-percent royalty rate. The report to Congress, completed in 2011, concluded that while total sales revenues from Federal Soda Ash leases increased, royalty revenues were significantly lower than they would have been absent the SARRA and that as a result of the lower 2-percent royalty rate, soda ash production had shifted away from state and private land leases onto Federal leases.

Section 39 of the MLA, 30 U.S.C. 209, authorizes the Secretary to reduce royalty rates and rental fees:

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, gilsonite ..., phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. ...

The BLM regulations contain a process for reducing royalty rates, along with rental fees and minimum production requirements, for non-energy solid minerals leased by the Federal Government in 43 CFR subpart 3513 - Waiver, Suspension or Reduction of Rental and Minimum Royalties. The process described in this subpart of the regulations imposes requirements beyond what section 39 of the MLA, 30 U.S.C. 209, requires. The BLM has reviewed the existing regulatory requirements for non-energy solid minerals and has determined that the royalty reduction process codified in 43 CFR subpart 3513 is unnecessarily restrictive, inflexible, and burdensome. See § 3513.15 of the section-by-section discussion of this preamble for a more detailed discussion of the overly burdensome requirements that this final rule removes.

The BLM promulgated the current regulations during the late 1990s to “streamline and rewrite necessary regulations in plain English.”³ The effect of rewriting the language, however, introduced some substantive changes as compared with the previous regulations by requiring those who are seeking a reduction to submit specific information in all applications that may not always be necessary. In contrast, previous versions of the royalty rate reduction regulations from 1946, 1964, and 1983 were more closely aligned with the statutory language and did not list specific data requirements for an application.⁴

This final rule streamlines the process to reduce rental fees, royalty rates, or minimum production requirements for all non-energy solid minerals leased by the Federal Government, without altering the substantive criteria that BLM will use to determine whether a reduction is appropriate, removing unnecessary and overly burdensome requirements. Additionally, this final rule codifies in regulation the BLM’s authority to implement area- or industry-wide reductions on the BLM’s own initiative, thus giving greater effect in 43 CFR part 3500 to the broad authority that the MLA grants to the Secretary of the Interior to reduce rental fees, royalty rates, and/or minimum production requirements to promote development. This improves the BLM’s ability to

³ “The purpose of this rule is to comply with President Clinton’s government-wide regulatory reform initiative to eliminate unnecessary regulations, and streamline and rewrite necessary regulations in plain English.” 64 FR 53,512, 53,512 (Oct. 1, 1999).

⁴ “In order to encourage the greatest ultimate recovery of the leased minerals, and in the interest of conservation, whenever the authorized officer determines it is necessary to promote development or finds that leases cannot be successfully operated under the terms provided therein, the rental or minimum royalty payments may be waived, suspended or reduced, or the rate of royalty reduced.” 43 CFR 3503.2-4(a) (1998). *See also* 43 CFR 3503.3-1(d) (1983); 43 CFR 3102.3(a) (1964); 43 CFR 191.25 (1946).

provide relief to producers of non-energy solid leasable minerals from burdens such as geological hardships⁵ and market transformations.

This final rule also aligns with the recommendations of congressional committees. The American Soda Ash Competitiveness Act was introduced in Congress in 2017 and recommended setting the Federal royalty rate for soda ash at the minimum of 2 percent for a 5-year period. Although this proposed legislation was not enacted, the Senate Committee on Appropriations expressed concern about keeping the United States competitive in the global soda ash market, and encouraged “the Bureau to work with soda ash producers to assist them in reducing royalty rates and [directing] the Bureau to take the necessary steps to reduce the Federal royalty rate for soda ash as appropriate.” S. Rep. No. 115-276, at 14 (2018). The House Appropriations Committee also noted in an explanatory statement for the 2018 Interior, Environment, and Related Agencies Appropriations bill that “the Committees] are concerned about maintaining the United States' global competitiveness in the production of natural soda ash. The United States contains approximately 90 percent of the world's natural soda ash deposits, while many international competitors are producing synthetic soda ash using more energy and generating higher emissions than natural soda ash production. Therefore, the Committees expect the Bureau to consider using its authority to reduce the Federal royalty rate for soda ash to 2 percent.”⁶

⁵ Geological hardships are circumstances that may slow or stop mining in a given area. These hardships may include such things as a thinning deposit, becoming exhausted, changing in composition, or running into an underground barrier, such as a structure that compromises the integrity and or grade of the deposit. Such circumstances often cannot be foreseen at the time of leasing.

⁶ An Explanatory Statement for the Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2018.

By clarifying the BLM's authority to reduce the royalty rate for soda ash and other non-energy solid leasable minerals in general (i.e., for the industry as a whole or for a particular area) in the absence of an individual lease-by-lease application submitted by a leaseholder seeking a reduction for specific leases in an operation, this final rule simplifies the process the BLM would need to go through if it were to determine certain area- or industry-wide royalty rate reductions were appropriate to promote development. In such a scenario, if a leaseholder is operating under a pre-existing reduction at the time of an area wide reduction, the lease will operate at the pre-existing reduction unless the area wide reduction is at a lesser rate.

The BLM has a history of receiving applications requesting royalty rate reductions for commodities such as lead-zinc, gilsonite, and potash. Since the early 1990s the BLM has received between ten and fifteen applications seeking a reduction, and approximately half of those were considered complete applications. The BLM has approved about five applications for reduction since 1993. Although the BLM has no history of implementing area- or industry-wide royalty rate reductions in the context of non-energy solid leasable minerals under 43 CFR part 3500, the BLM has reduced royalty rates on an area-wide basis for coal leases under section 39 of the MLA, 30 U.S.C. 209. As an example, the BLM reduced the royalty rate for coal leases in a specific area of North Dakota in the spring of 2019 to 2.2 percent as a "category 5" reduction due to market conditions.

Executive Order 13817, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals," emphasizes the need for the United States to domestically source critical minerals. The Secretary of the Interior published a "Final List of Critical Minerals" on May 18, 2018. This list includes commodities that can be leased as non-

energy minerals, such as potash and metals like lithium or rare earth on any unclaimed, undeveloped area of public domain and on acquired lands. This final rule would further the goals of EO 13817 by improving the BLM's ability to react to unforeseen market forces and ensure continued production of critical minerals on Federal lands.

Over the past two decades, U.S. natural soda ash production has grown at an average annual rate of 0.9 percent, from 11.1 million short tons (MMst) in 1998 to 13.2 MMst in 2018, which comprised 22 percent of world soda ash production in 2018.⁷ During this period, however, Chinese synthetic soda ash production grew at a 6.4 percent annual rate, rising from less than one-quarter of world total soda ash production to nearly half.⁸ China has used the Hue and Solvay synthetic processes to ramp up its soda ash production, surpassing U.S. total production in 2003,⁹ and producing double the U.S. volume in 2011.¹⁰

Although China's soda ash production has largely focused on producing glass for its automotive and construction industries (among others), its rise has reduced the ability of U.S. producers to satisfy the burgeoning demand for the mineral. It has also caused the U.S. share of world soda ash production to decline from 31 percent of the world total in 1998 to 22 percent in 2018. Moreover, while China's more expensive synthetic soda ash production has largely gone to its domestic manufacturing industry, relatively low-cost natural soda ash produced from Turkey's significant trona ore deposits compete directly with U.S. exports to countries in the European Union and elsewhere. Recent

⁷ U.S. Geological Survey (USGS) *Minerals Yearbook* data, editions from 2002 through 2018.

⁸ USGS *Minerals Yearbook* data through 2017, with National Bureau of Statistics of China monthly data from January through October 2018 used to project the 2018 total.

⁹ Dennis S. Kostick, U.S. Geological Survey, 2005 *Minerals Yearbook: Soda Ash 70.1* (2006).

¹⁰ Wallace P. Bolen, U.S. Geological Survey, 2014 *Minerals Yearbook: Soda Ash 70.1* (2015).

announcements point to soda ash production expansions in Turkey, as well as in Belarus, Kazakhstan, Uzbekistan, India, Thailand, and Pakistan.¹¹

It is the BLM's view that in light of world market developments, including those described above, this final rule is necessary to keep the United States competitive in the world markets of non-energy solid leasable commodities. The BLM also views the rule as necessary to promote development of non-energy solid leasable mineral resources in accordance with the MLA, particularly during periods of market fluctuation. For example, from 2008 to 2010, the price of soda ash, as with many other commodities, spiked and then dropped precipitously, threatening industry proponents' ability to operate successfully while paying all related royalties and taxes.

The changes in this final rule will not adversely affect the processing time for royalty rate reduction applications. On the contrary, the changes will reduce the time required for a lessee to compile and complete applications. Moreover, the rule will allow the BLM to implement industry- or area-wide reductions on its own initiative in accordance with section 39 of the MLA, 30 U.S.C. 209.

II. Discussion of the Final Rule and Comments on the Proposed Rule

Discussion of Comments by Topic

General Comments

Comment: Some commenters opposed the rulemaking and asserted that environmental impacts will increase due to increased access to leasing and ramping up of production. A commenter suggested that "regulations should not be streamlined for

¹¹ Wallace P. Bolen, U.S. Geological Survey, 2016 *Minerals Yearbook*: Soda Ash 70.1 (2016).

economic reasons” and that “environmental fortitude should be valued above international trade and local mining operations”.

Response: This rule does not reduce any royalties, but merely changes the process by which certain royalty reductions may be considered and made. No royalties will be reduced unless and until a subsequent decision or decisions are made pursuant to this rule. Therefore, this rule will not result in any environmental impacts. Moreover, a reduced royalty does not change the amount of acreage that has been leased or the amount of minerals in the leased lands. Instead, such a royalty allows an operator to continue mining the same volumes that were available to develop under an approved mining plan, but with a lower royalty payment. BLM does not anticipate that reduced royalties will increase the footprint on Federal leases or result in increased environmental impacts on public lands.

Moreover, reduced royalties only apply to existing leases with approved mine plans, which have already undergone environmental analysis in compliance with NEPA regulations, not to new development, therefore there is no increased footprint from a royalty reduction. Before BLM can approve a mine plan of operations, a NEPA analysis is conducted. Heretofore, a CX has been completed for reductions on leases that have already undergone an environmental analysis for their associated mine plan of operations. The CX for a royalty rate reduction has been done in accordance with our NEPA handbook H-1790-1 Appendix 4, F4 on page Appendix 4-152.

Comment: Some commenters expressed concern that lowered royalty rates will reduce revenue to states, including funds for local school districts. The commenters stated that recent earthquakes caused damage to local infrastructure and that earthquake

recovery efforts would cost the school district in the vicinity of the earthquake several millions of dollars.

Response: In 2019, the federal government collected \$57.1 million in Royalties from non-energy solid leasable minerals, 49% of which was transferred back to the states, totaling \$28 million. By comparison, \$3.2 billion dollars was collected from oil, gas, and coal in 2019, of which the states also received 49%, totaling \$1.6 billion. This means that royalties from non-energy solid leasable operations on federal lands only make up 1.7% of total royalties paid to the states, so temporary reductions for which a lessee might qualify would not substantially affect total royalties received by the states. Moreover, it should be noted that such temporary reductions may increase aggregate state revenues by allowing certain operations to continue (rather than decrease production or shut down entirely), thereby assuring that payments to the State would continue over a longer period. The statute provides authority to reduce royalty rates in order to ensure the “greatest ultimate recovery” of the mineral. 30 USC § 209. If an operator is forced to close due to a shift in economic conditions or hardships, it could lead to job losses and minerals left undeveloped over the long term. The ability to provide flexibility to royalty rates may allow for production to remain economic and keep operations going, leading to the greater ultimate recovery of the resource and continued royalty payments to the states. The BLM does not have control over the way in which states allocate funds after royalties are paid. The BLM does not expect a change of revenues from promulgation of this rule, as it does not directly affect royalty rates. If the BLM were to reduce royalty rates subsequent to this rulemaking, there may be a decrease in revenues collected in order to ensure the greatest ultimate recovery. Because this rule does not directly affect

royalty rates, the BLM cannot at this time assess the impact of specific royalty rate adjustments that may be implemented at a future date. For instance, in some cases, a royalty rate reduction may allow operations and royalty revenue to continue that may otherwise have ceased.

Comment: Many commenters supported the rule change, specifically pertaining to soda ash, potash, and gilsonite. However, some commenters appeared to mistakenly assume that the final rule would implement an automatic royalty rate reduction for certain industries.

Response: The final rule does not reduce the royalty rates for any mineral. Instead, it will streamline the application process and will allow the BLM to consider whether it will issue an area- or industry-wide reduction on its own initiative for non-energy solid minerals leased by the Federal Government, if the BLM determines that such a reduction is necessary in order to promote development. This will improve the BLM's ability to provide relief to producers of non-energy solid leasable minerals, including soda ash, potash, and gilsonite, from burdens, such as geological hardships and market fluctuations, when necessary. The final rule is intended to promote development of the mineral resources in accordance with section 39 of the MLA (30 U.S.C. 209).

Comment: Some commenters suggested that the BLM should consider updating and publishing its guidance documents, including the Non-Energy Solid Leasable Handbook H-3500-01, to be consistent with any rule amendments or additions.

Response: The BLM will update its guidance documents following this rulemaking, including the Non-Energy Solid Leasable Handbook H-3500-01, to further clarify the parameters of reductions. Updates to the rule's implementing guidance will be

coordinated with OMB. The updated handbook will be posted online and available to the public via the guidance document section of the Department of the Interior's Electronic Library of the Interior Policies (ELIPS) website (<https://www.doi.gov/elips/browse>).

Current guidance can be found in BLM Manual Section 3485-Reports, Royalties, and Records, December 17, 1990

(https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmmanual3485.pdf).

Comment: One commenter suggested that the BLM should decline receiving any royalties from potash, leaving the balance to be deposited to the states from which potash is mined. That would decrease the amount of royalties paid by the respective industries while not hurting the entities benefiting from the royalties in those states.

Response: The BLM is required to collect royalties on federally owned minerals as described in the Mineral Leasing Act at 30 U.S.C. 181 and 43 CFR 3504.20, which states: "you must pay royalties on any production from your lease in accordance with the terms specified in the lease." Any potential revisions to 43 CFR 3504.20 would be outside the scope of this rulemaking.

Market Conditions

Comment: Many commenters expressed support for the final rule, including the new provision that codifies the BLM's authority to issue an area- or industry-wide reduction on its own initiative. These commenters expressed support for the BLM's use of an industry-wide reduction or reductions to support producers on public lands in the domestic and global markets.

Response: In accordance with section 39 of the MLA (30 U.S.C. 209) and with this final rule, the BLM may issue a reduction on its own initiative when it determines “it is necessary to do so in order to promote development.” Following publication of this final rule, the BLM will consider all available and applicable information when determining whether such a reduction is necessary.

Comment: Some commenters provided detailed information about the historical trends and projected future of the soda ash market, which included an expectation for domestic demand to remain flat for the foreseeable future. Some commenters also provided information about market conditions for other commodities, as well as information about international production.

Response: While the BLM did not make any changes to the final rule as a result of these comments, this is the kind of data that the BLM would find useful in the future when determining whether it is necessary to issue an industry-wide or area-wide reduction to promote development. Lessees are welcome to present helpful data at any time. This rule does not implement a royalty rate reduction but merely clarifies the procedures for doing so.

Application Process

Comment: Many commenters supported the BLM’s revisions to streamline the application process. These commenters agreed that it is unnecessary for applicants to submit some of the information required in the current regulation and that the changes do not alter the substantive criteria.

Response: The BLM appreciates the support for this rule.

Comment: Some commenters noted that in some cases, royalty rates are lower on State leases than on Federal leases. They also noted that it is often less expensive for a company to mine a commodity on privately held lands than on public lands.

Response: Although the BLM did not make any changes to the final rule in response to this comment, this is the sort of information that should be included in applications for reductions that are submitted by operators under section 3513.15 of this rule.

Comment: A commenter asserted that every effort should be made to facilitate domestic critical mineral production. The commenter not only supported the changes in the proposed rule concerning rent and royalty reduction requests, but also argued that the Federal processes for obtaining mine permits should be streamlined more generally.

Response: The additional changes supported by the commenter are beyond the scope of this rulemaking. We note that the BLM may take additional actions in the future to facilitate the production of critical minerals on public lands.

Comment: Some commenters provided a suggested revision to proposed section 3513.15(f), which proposed to describe the information necessary to support a reduction request for a minimum mineral production requirement. The proposed rule would have required that the applicant submit “complete information” with a reduction request. The commenters believe that such a requirement is unnecessarily broad and recommend that the rule require only “the information sufficient to demonstrate” the need for the reduction.

Response: The BLM agrees with this comment and has revised Section 3513.15(f) in the final rule. See the discussion of section 3513.15 for more information about this change.

Comment: Some commenters believe that an additional paragraph should be added under section 3513.17(c), authorizing the BLM to grant an extension to an existing rate reduction if the economic conditions continue to warrant such reduction. The commenters suggest that this would obviate the need for the creation and filing of a completely new reduction request.

Response: The royalty rate at which a commodity is set is analyzed by the same criteria regardless of the type of request. Therefore, a regulatory mechanism for an extension would be redundant. An operator that was granted a reduction under section 3513.15 could apply for another reduction after the initial reduction ends and could reuse any information in a new application that has not changed since the initial application was submitted.

Area and Industry Wide Reductions

Comment: Some commenters agreed with the BLM that the MLA explicitly grants the BLM the authority to lower royalty rates to promote development, based on any information available to it, including information submitted in lease-specific applications. The commenters noted that the MLA does not limit the information that the BLM may consider in exercising its judgment. Some commenters support the addition of section 3513.17, but encourage the BLM to broaden the language of the rule to clarify that lessees or industry representatives may request the BLM to reduce royalties or the

minimum production amount under 3513.17(a), instead of allowing the BLM to do so on its own initiative only.

Response: The BLM may use information received through the application process under section 3513.15 when determining whether an area- or industry-wide reduction is necessary to promote development. This rule does not disallow lessees or industry representatives from submitting to the BLM any communications about whether an area- or industry-wide reduction is warranted. The BLM may consider any applicable data submitted by the public when evaluating an industry wide or area wide reduction.

This final rule also does not limit how many operators could jointly file an application, so long as information is included “for all leases involved.” If several interested parties jointly submit an application for a royalty rate reduction, the BLM could approve that application for the leases identified in the application or could initiate an industry-wide reduction under section 3513.17(a).

Comment: Some commenters asserted that the BLM should prepare a competitive analysis before granting an area-wide rate reduction. These commenters expressed concern that issuing a reduction in one area could cause direct and indirect competitive impacts on the affected industry at large, as well as individual members of that industry. In addition, these commenters stated that there is potential for BLM rate reductions in one region of the country to have unintended and anti-competitive impacts to market participants in other regions.

Response: As described in the section-by-section analysis, an area-wide reduction would generally be issued to overcome a geological hardship in a specific area. Such a reduction would be limited to a specific period of time. If the BLM determines that a

condition impacts more than one specific area, it could initiate an industry-wide reduction under section 3513.17(a). The BLM will determine what analysis is necessary on a case-by-case basis, but no change to the rule is necessary. The level and type of analyses appropriate to a particular case may differ from case to case, and it would be inefficient for the regulations to impose unnecessary or overly burdensome requirements on the process.

Timing and Fixed Tonnage

Comment: The BLM received comments both in favor of, and opposed to, timing restrictions for a reduction. Some commenters believed that the BLM should not issue a reduction for less than 10 years, because anything less than 10 years would not provide sufficient stability for the affected industry.

Response: The BLM will determine the appropriate length of time for each reduction based on the best available information. For more information about the 10-year limit on reductions, see the section-by-section discussion of section 3513.17(c). The final rule will retain the flexibility to issue a reduction for less than 10 years. The BLM recognizes that some business decisions will be made based on this timeframe, and will designate appropriate timeframes based on the best data available to provide more certainty to affected parties and communities, facilitating longer-term planning, investment, and hiring decisions.

Comment: Some commenters suggested that the timeframe of a reduction should take into account the time it can take a company to launch a plant or mine expansion. The commenters encouraged the BLM to look for constructive ways to ensure that the

full extent of royalty relief is made available by allowing for the tolling of the royalty reduction for projects that are under construction, until they are completed.

Response: The BLM will take into account all available information when determining the appropriate length of time for a reduction. If a project takes longer to complete than the length of the reduction, the lessee could apply for an additional reduction under section 3513.15 if the lessee would be unable to meet the terms and conditions of the lease. Lessees should recognize that these reductions are temporary in nature, and business decisions should not be made that assume that a reduction will be in place for longer than the period of time for which the reduction is issued. This rule does not implement a royalty rate reduction but merely clarifies the procedures for doing so.

Comment: Some commenters disagreed with the BLM's being able to apply a fixed tonnage rather than applying a time limit. These commenters expressed frustration and confusion with BLM's explanation in the preamble of its proposal as to how this fixed tonnage amount would be determined.

Response: The BLM revised the preamble in the final rule to more clearly explain how a fixed tonnage is determined. A tonnage constraint allows for a royalty rate reduction to be applied without a time limit for a designated ore block and gives BLM the flexibility to apply the best reduction strategy for a given application or area. The use of a fixed tonnage could prevent a lessee from exploiting a reduction issued by the BLM to produce excessive quantities of a commodity at a reduced rate. Some geologic hazards may present a challenge where it would be difficult to estimate how long it would take for a lessee to overcome the problem presented by a particular hazard, and a fixed

tonnage could provide the BLM flexibility to provide relief without a time constraint on the lessee.

Comment: A commenter expressed concern that the proposed rule would not require the BLM to notify lessees when a reduction ends.

Response: The BLM will issue a reduction with a specific end date or a maximum fixed tonnage. The lessee is responsible for adhering to the agreed terms of the reduction. The BLM case file will include the terms of this agreement, and a lessee may consult with the BLM if the lessee needs this information. It will also be BLM policy to notify lessees before and when reductions end. This information is included in the initial notification letter describing the royalty rate reduction, its start and end date, and the reduced rate.

Comment: A commenter suggested that the BLM should clarify in the final rule that it will not adjust the time period for a rate reduction after that reduction has already been issued, unless the BLM determines, after providing the applicant with notice and an opportunity to be heard, that the criteria for the rate reduction are no longer present.

Response: The BLM recognizes that lessees may make planning, investment, and hiring decisions as a result of the BLM's issuing a reduction. The BLM makes these determinations on a case-by-case basis with the best available information, but recognizes that some estimates may not align exactly with the time needed to overcome a hardship. The final rule includes a 10-year limit to prevent unnecessary loss of revenue. Under new paragraph 3513.17(d), the BLM will not end a reduction before the end of the term or fixed tonnage originally identified.

Section-by-Section Discussion of the Final Rule

The regulations in 43 CFR part 3500 are authorized by the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) and other statutory authorities as listed in 43 CFR 3501.1. This final rule revises the authority citation for part 3500 by adding Section 39 of the MLA (30 U.S.C. 209), which authorizes the Secretary to reduce royalty rates and rental fees. This is consistent with other provisions in this final rule and is not a substantive change.

The final rule streamlines the process to apply for rental fee, royalty rate, and minimum production requirement reductions for non-energy solid mineral leases. This final rule also reduces the burden on lease holders by simplifying the regulatory requirements to better align the regulations with the statute.

You may find the BLM regulations that implement this authority for solid minerals (other than coal) in 43 CFR subpart 3513 - Waiver, Suspension or Reduction of Rental and Minimum Royalties.

§ 3513.11 May BLM relieve me of the lease requirements of rental, minimum royalty, or production royalty while continuing to hold the lease?

Section 3513.11 states that the BLM has a process that allows for temporary relief from the rental, minimum royalty, or production royalty provisions in a lease. The BLM considers applications submitted under section 3513.15 on a case-by-case basis based on the data in the application for relief from lease requirements. This existing section is the introductory provision in subpart 3513, which explains that process in greater detail. The BLM Manual Section 3485-Reports, Royalties, and Records, December 17, 1990 (https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual3485.pdf)

f), includes guidance for processing applications for temporary relief from the rental, minimum royalty, or production royalty provisions and will be updated following this rulemaking.

This final rule adds to section 3513.11 a citation to the relevant section of the Mineral Leasing Act (30 U.S.C. 209). This is not a substantive change.

§ 3513.15 How do I apply for reduction of rental, royalties, or minimum production?

Section 3513.15 sets out the information that a lessee must include in an application to BLM. The BLM needs the information provided in an application to determine whether the request satisfies the reduction criteria described in 43 CFR 3513.12.

This final rule removes the requirement to submit two copies of an application, because two copies are no longer necessary. When the BLM promulgated these regulations, lessees submitted applications to the BLM via hard copy mail and the BLM used both paper copies during its processing. The BLM is able to receive and process these applications electronically, or the BLM is able to make physical or electronic copies of the paper submissions.

Paragraph 3513.15(d) in the current regulations requires an application to include a description of the lands for which the reduction would apply. This final rule revises this requirement to be applicable only when the application is for a portion of the lease or leases. If the application is for the lease in its entirety, the BLM already has that information on hand, and a land description would not be necessary for that application.

This revision makes the application easier to complete and improves processing timeliness.

This final rule removes paragraphs (f) and (h) of the previous regulations, which required a tabulated statement of the leasable minerals mined for each month, covering at least the last twelve months before a lessee files an application; the average production mined per day for each month; a detailed statement of the expenses and costs of operating the entire lease; and the income from the sale of any leased products. This information is not required under the final rule, because the BLM already knows the quantity of leasable minerals that the lessees are mining on each lease. The BLM can extrapolate the average production mined per day from production records and mine plan reports that the lessee already submits to the BLM and Office of Natural Resources Revenue (formerly Mineral Management Service) for royalty payment purposes and to prove that the lessee is meeting minimum production requirements as indicated on its lease form in accordance with 43 CFR 3504.20. Similarly, the Office of Natural Resources Revenue also gathers information pertaining to income from the sale of minerals. The detailed statement of expenses and costs is not necessary for the application because the reduction is based on market conditions and geologic interferences that are not tied to past costs and expenses. BLM may request information under the new 43 CFR 3513.15(h) (formerly (l)) if it finds that such information would be necessary to assess a specific application. For example, the applicant's fixed utility costs will generally not change with the commodity's market fluctuations, so we know that the applicant's costs to run the operation will not decrease at the same rate as its income from the commodity price decreases. Removing this

unnecessary requirement also makes the application easier to complete, further improving the timeliness of the reduction process.

In the proposed rule, paragraph (g) in the previous rule became new paragraph (f). New section 3513.15(f) is revised in this final rule from the language initially proposed in response to comments received. The language in proposed section 3513.15(f) was not changed from language in previous paragraph (g), which required applicants to provide “complete information” about why they were unable to meet the terms and conditions of their leases. The commenters believe that this requirement is unnecessarily broad and recommended that the BLM require only “the information sufficient to demonstrate” the need for the reduction. The BLM agrees that the initially proposed text was unclear, and the final rule incorporates the suggested revisions. The language in the final rule more accurately describes how much information an applicant must include in its application. Similar to paragraph (g) of this section, this clarification will not result in any substantive impacts.

Section 3513.15(g) of the final rule contains the requirement found in section 3513.15(i) of the previous regulations. However, instead of requiring “all facts” showing why the lessee cannot successfully operate a mine, the final rule requires the application to provide “justification” showing why the lessee cannot successfully operate a mine under the existing royalty or rental. The final rule provides a more measured requirement for the applicant to demonstrate why it is unable to meet the terms of the lease. It is still imperative for the application to provide sufficient justification for the BLM to make its determination in each applicant’s case. While this is a change to the wording of the regulation, the BLM does not expect any substantive impact from this revision because

the applicant will still need to demonstrate why it cannot operate the lease under current conditions. Data that may be seen in these types of applications include: geologic maps and reports about hazards being encountered, cost per ton of product, revenue per ton of product, or reports discussing any financial hardship that an individual mine is facing.

This final rule also removes paragraphs (j) and (k) of section 3513.15, which required full information as to whether the lessee pays royalties or payments out of production to anyone other than the United States, the amounts paid and efforts the lessee has made to reduce them, and documents demonstrating that the total amount of overriding royalties paid for the lease, discussed in 43 CFR 3504.26, will not exceed one-half the proposed reduced royalties due the United States. The BLM expects that the application would disclose any relevant information regarding overriding royalties under the informational requirements of sections 3513.15(g) and (h) of the final rule because the BLM has authority to order the operator to suspend or reduce an overriding royalty as stated in 43 CFR 3504.26. The removal of paragraphs (j) and (k) makes the application easier to complete, improving the timeliness of the process.

Section 3513.15(h) of the final rule contains the requirement, set forth in section 3513.15(l) of the previous regulations, that the applicant include any additional information that the BLM requires to determine whether the applicant meets the standards of section 3513.12. Section 3513.12, which this rule does not amend, explains the criteria that the BLM considers when approving a waiver, suspension, or reduction in rental or minimum royalty, or a reduction in the royalty rate.

§ 3513.17 How will the BLM implement a reduction of rental, royalties, or minimum production?

This final rule adds a new section 3513.17, which explains how the BLM implements royalty rate reductions

Section 39 of the MLA, 30 U.S.C. 209, authorizes the Secretary to reduce royalty rates and rental fees “whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein.” 30 U.S.C. 209. This provision of the MLA authorizes the Secretary to provide across-the-board royalty rate relief for all lessees who are developing non-energy minerals leased by the Federal Government, as long as the Secretary finds that it is necessary to do so in order to promote development. Promoting development will help ensure operations can continue, preserve jobs, and help ensure that domestic commodities from those operations remain available.

Section 3513.17 is outlined as follows:

Paragraph (a) of section 3513.17 implements section 39 of the MLA in the regulations, enabling the BLM to reduce rental fees, royalty rates, or minimum production requirements on its own initiative, whereas previously, the BLM could provide rate relief only upon application on a case-by-case basis. This new section allows the BLM, on behalf of the Secretary of the Interior, to provide such relief in order to promote the overall development of a mineral resource for all leases in a geographic area or across an industry. This section more fully implements in 43 CFR part 3500 the broad authority that the MLA grants to the Secretary of the Interior for implementing these reductions in order to promote development, in addition to the reductions based on individual lease-by-lease applications.

Paragraph (b) of section 3513.17 explains that the BLM may implement a reduction in response to an application submitted under section 3513.15. This is not a change from existing practice, but it is included to demonstrate the difference between the application process of section 3513.15 and a BLM-initiated reduction under section 3513.17(a).

Paragraph (c) of section 3513.17 describes how the BLM will limit reductions implemented under section 3513.17. Section 3513.17(c) applies both to reductions that the BLM implements on its own initiative under section 3513.17(a) and to reductions that the BLM implements in response to an application under section 3513.17(b). Under paragraph (c) of this section, reductions are limited either by duration or by tonnage. That is, reductions either are limited in duration to not more than 10 years from the date on which BLM implements a reduction under either paragraph (a) or (b), or are limited to not more than a specific tonnage that the lessee produces, as determined by the BLM, under paragraph (b). The BLM determines the specific time or tonnage limit appropriate for each reduction on a case-by-case basis. The BLM will determine the duration of a reduction or a tonnage limit based on projected market conditions or geologic hazard attributes for each application, or for the subject area or industry. If a reduction is in response to an application under section 3513.17(b), the reason or reasons set forth in the application will help determine the appropriate term or tonnage limit of the reduction.

Prior to 1999, there was no requirement in the BLM's regulations that a reduction would be temporary, though in practice reductions generally have been temporary.¹² Placing timing or tonnage constraints on reductions in this final rule will ensure that any

¹² See 43 CFR 3503.2-4 (1998).

reductions that the BLM grants or initiates would be applied when necessary to promote development, but not longer than necessary. At the end of the reduction period, the royalty, rental, or minimum production requirements will increase to their original rates. At that time, the lessee would operate under the original lease terms.

The BLM anticipates setting a time limit (rather than a maximum production volume) when issuing an area- or industry-wide reduction to promote development. The final rule limits the reduction to not more than 10 years, but the BLM may determine that a shorter period is appropriate. Market conditions can fluctuate over a 10-year period, and a longer period in a single grant may not be appropriate. Past legislation for reductions expired after 5 years, so a 10-year term was chosen as a maximum, with the option to make the term shorter, if appropriate.

When a lessee submits an application under section 3513.15, in certain circumstances, such as areas with geologic hazards, it might be more appropriate to apply a fixed tonnage limit rather than applying a time limit. Qualified BLM personnel would then calculate a fixed tonnage using known, estimated, or historic production determined by current mining style, rock type, and operator production capabilities or volume required to overcome a geologic hazard.

Under the existing regulations, the BLM has often used a fixed tonnage when applying a constraint to the royalty rate reduction for a lease. The tonnage constraint ensures that the lessee produces the amount of a mineral projected over a particular period, but prevents the lessee from refocusing production exclusively to an area with a reduced royalty rate and producing a greater amount of the mineral at the reduced royalty rate.

While there is no specific process in the regulations for an extension of these constraints, the final rule does not limit the number of times that lessees may apply for a reduction under section 3513.15.

III. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it may raise novel legal or policy issues.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The final rule will reduce duplicative information requirements for non-energy solid leasable minerals operators who apply for a reduction of rental, royalties or minimum production. The final rule will also more fully implement the Secretary's authority under section 39 of the MLA, 30 U.S.C. 209, to provide these reductions to promote development.

The BLM reviewed the requirements of the final rule and determined that it would not 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. For more detailed information, see the Regulatory Impact Analysis (RIA) prepared for this rule. The RIA has been posted in the docket for the rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004-AE58”, click the “Search” button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This final rule is an E.O. 13771 deregulatory action. As discussed in section 1 and detailed in section 3 of the RIA, the estimated cost of the final rule is negative (a net benefit) in that it could produce a benefit to society from greater overall non-energy solid leasable (NESL) minerals economic activity. This leads to the final rule having an annual net benefit of between \$0 and \$1.62 million in 2018 dollars (\$1.45 million in 2016 dollars) per affected industry depending on the resource that could be counted under Executive Order 13771, Section 2(c), as offsetting costs from any new regulation that the Department of the Interior may propose.

The BLM does not expect a change of Federal revenues from promulgation of this rule, as it does not directly affect royalty rates. If the BLM were to reduce royalty rates subsequent to this rulemaking, there may be a decrease in federal revenues collected in order to ensure the greatest ultimate recovery. This, however, would depend on the specific parameters of the royalty adjustments and the market environment at the time of action, as a royalty rate reduction may allow operations and

royalty revenue to continue from operations that may otherwise have ceased if they did not receive a royalty reduction.

Administrative PAYGO (E.O. 13893)

E.O. 13893, “Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO” (Oct. 10, 2019), requires agencies to “include one or more proposals for reducing mandatory spending whenever an agency proposes to undertake a discretionary administrative action that would increase mandatory spending. Section 3 of E.O. 13893 defines “discretionary administrative action” in part as an administrative action that is not required by statute and would impact mandatory spending. This rulemaking adopts regulatory language to more closely align with the broad statutory authority, including at 30 U.S.C. § 290.

For the purpose of examining the rule under E.O. 12866, the BLM analyzed what the potential impacts would be if the royalty rates for these commodities were reduced, including reduced contributions to the U.S. Treasury. The scenarios examined are hypothetical and would not take effect with the issuance of this rule. Because this rule does not directly affect royalty rates, the BLM cannot at this time assess the impact of specific royalty rate adjustments that may be implemented at a future date. The statute allows the Secretary to make a decision in order to ensure the greatest ultimate recovery of the resource. While we estimate that the potential royalty rate reductions could reduce contributions to the U.S. Treasury, there may be instances where royalty reductions could incentivize mining to continue for a longer duration on public lands, versus closure of operations, and therefore could ensure royalty payments at a reduced rate for a longer time horizon. The Mineral Leasing Act envisions a fluctuating minerals market in which

the Secretary may need to waive, suspend, or reduce royalty rates in order to ensure the greatest ultimate recovery of the resource. This rulemaking takes into account the markets for a given mineral at a certain snapshot in time.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM examined current BLM lessors for soda ash and potash and found that 0 of 5 soda ash lessors, 1 of 3 potash lessors, and 1 of 1 gilsonite lessors are entities that constitute a small business. While this could be considered a substantial number of small businesses in the context of entities affected by this rule, the final rule does not directly have a significant economic impact.

The final rule's only direct economic impact is the reduced information collection requirements for an application, which lessens the burden on the company when applying for a royalty rate reduction. We have calculated this to be an average saving of \$680 a year. The rest of this rule gives the BLM tools to potentially reduce royalty rates in the

future but does not currently affect industry. The BLM will consider the economic impacts on affected entities when issuing reductions under this final rule..

For the purpose of carrying out its review pursuant to the RFA, the head of the BLM certifies that this final rule will not have a “significant economic impact on a substantial number of small entities.”. The agency certifies this on the basis that the final rule does not have a significant economic impact. A final regulatory flexibility analysis is therefore not required. For a more detailed discussion see the section 2.8 of the RIA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The BLM estimates that the rule would provide an annual benefit of \$619,000 to the economy. Please see the RIA for this rule for a more detailed discussion.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule is designed to lessen the burden on industry, when necessary, while still providing revenue to the government. This revenue is based on commodity price, adjusted royalty rate, and production amounts.

(c) Does 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. This rule may foster positive effects in each of these areas. This rule would improve the BLM’s ability to provide relief to the affected industry.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, tribal governments or the private sector. This rule would affect only the BLM's process for providing reductions to rental, royalties or minimum production requirements of Federal leases. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The rule is a deregulatory action and does not interfere with private property. A takings implication assessment is not required.

Federalism (EO 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule would reduce burdens on industry and more closely align BLM regulations with the relevant statute. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (E. O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. The rule would apply to non-energy mineral leases on the Uintah and Ouray Indian Reservation, Hillcreek Extension, State of Utah (43 CFR 3503.11(b)), but no active leases have been present on those lands for approximately 15 years. There are no plans to grant new leases to any entity at this time, nor is there any entity interested in pursuing leases on those lands. This is a procedural rule that does not change any royalty rates. If the BLM considers implementing an area- or industry-wide reduction under this rule that may have impacts on a tribe or tribes, the BLM would initiate tribal consultation, as appropriate, at that time.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This final rule contains a collection of information that the BLM has submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency (44 U.S.C. 3502; 5 CFR 1320.3(c) and (k)). The OMB has reviewed and approved the information collection requirements in this rule and assigned OMB Control Number 1004-0121, which expires October 31, 2022.

The proposed rule, soliciting comments on the collections of information for 60 days, was published in the *Federal Register* on October 18, 2019 (84 FR 55873). No comments were received related to the information collection activities.

This final rule retains most of the text of the existing regulations while making only a small number of changes. The BLM has determined that the changes in the final rule are necessary to update the process for lessees to seek and for the BLM to grant reductions of rental fees, royalty rates, and/or minimum production requirements associated with all non-energy solid leasable mineral under 43 CFR part 3500.

At present, 32 information collection activities are authorized under control number 1004-0121. This information collection request pertains to this final rule in which the BLM will revise control number 1004-0121 by dividing one previously approved information collection activity, Application for Waiver, Suspension, or Reduction of Rental or Minimum Royalties, or for a Reduction in the Royalty Rate, into two activities. One activity will be limited to applications for suspension of operations,

and the other activity will include applications for reductions of rental, royalties, and minimum production. The net result of this revision will be that control number 1004-0121 will include 33 information collection activities.

In addition, the BLM is reducing the hours for the application for reduction of rental, royalties, or minimum production (43 CFR 3513.15 and 3513.16). The result will be a 10-hour reduction of estimated industry staff time, from 100 hours to 90 hours per application, of information that industry has to collect at present to submit an application.

The net reduction of 10 burden hours per year will be a result of revisions of 43 CFR 3513.15 that will simplify applications for reduction of rental, royalties, or minimum production requirements. These revisions will:

- Remove current section 3513.15(f), which at present requires a tabulated statement of the leasable minerals mined for each month covering at least the last twelve months before the filing of the application, and the average production mined per day for each month;
- Move current paragraph (g) to new paragraph (f), but make no other changes to that paragraph, which requires that an application for relief from the minimum production include complete information why minimum production was not attained;
- Remove paragraph (h), which currently requires a detailed statement of expenses and costs of operating the entire lease, and the income from the sale of any leased products;
- Revise current paragraph (i) by requiring “justification” rather than “all facts” showing why the operator cannot successfully operate the mines under the royalty

or rental fixed in the lease and other lease terms;

- Move current paragraph (i) to new paragraph (g);
- Remove current paragraph (j), which at present requires that an application for reduction of royalty must include full information about any royalties the lessee pays to anyone other than the United States and a description of the efforts the lessee has made to reduce the other royalties;
- Remove current paragraph (k), which requires documents demonstrating that the total amount of overriding royalties the lessee will pay will not exceed one-half the proposed reduced royalties due the United States;
- Revise current paragraph (l) to require “any other information BLM needs to determine whether the request satisfies the standards in [43 CFR] 3504.25 or [43 CFR] 3513.12.”;
- Move current paragraph (l) to new paragraph (h).

Abstract: The BLM requests OMB to approve the revision of control number 1004-0121 in light of a final rule, which is intended to streamline applications for various forms of relief, including royalty rate reductions. Information Collection burdens associated with 43 CFR 3500 are approved under OMB Control Number 1004-0121 (27,306 annual burden hours, 507 annual responses, and \$2,050,695 non-hour costs; expires October 31, 2022). This rule reduces annual burden hours by 10 hours. There are no changes to number of response or non-hour cost burdens.

Title of Collection: Leasing of Solid Minerals Other Than Coal and Oil Shale.

OMB Control Number: 1004–0121.

Form:

- Form 3504-1, Personal Bond and Power of Attorney under Mineral Lease or Prospecting Permit for Mining Deposits;
- Form 3504-3, Bond Under Lease for Mining Deposits;
- Form 3504-4, Statewide or Nationwide Personal Mineral Bond for Prospecting Permits and Leases—Coal, Sodium, Phosphate, Potassium, Sulphur, and Other Mineral Deposit;
- Form 3510-1, Prospecting Application and Permit;
- Form 3510-2, Phosphate or Sodium Use Permit; and
- Form 3520-7, _____ Lease;

Type of Review: Revision of a currently approved information collection.

Description of Respondents: Holders of Federal leases of solid minerals other than coal and oil shale.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Annual Responses: 507

Estimated Total Annual Burden Hours: 27,296

Estimated Total Annual Non-Hour Cost: \$2,050,695

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

If you wish to comment on the information collection activities, you may send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA. To see a copy of the information collection request submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review); or you may obtain a copy of the supporting statement for the collection of information by contacting the Bureau's Information Collection Clearance Officer. Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_Submission@omb.eop.gov (email). Please provide a copy of your comments to Faith Bremner, Senior Regulatory Analyst, Bureau of Land Management, 20 M Street, S.E., Room 2134 LM, Washington, D.C. 20003; or by email to

fbremner@blm.gov. Please reference OMB Control Number 1004-0121 in the subject line of your comments.”

National Environmental Policy Act

The BLM has determined that the changes made by this final rule are administrative or procedural in nature in accordance with 43 CFR 46.210(i) (“Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case”). Further, the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, this action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. This rule would amend only BLM regulations that could impact non-energy solid leasable minerals. A Statement of Energy Effects is not required.

Author

The principal authors of this rule are: Lindsey Curnutt, Division of Solid Minerals; Charles Yudson, Division of Regulatory Affairs; assisted by the Office of the Solicitor.

Dated: _____

Casey Hammond
Principal Deputy Assistant Secretary
Exercising the Authority of the Assistant Secretary, Land and Minerals Management

List of Subjects in 43 CFR Part 3500

Government contracts, Hydrocarbons, Mineral royalties, Mines, Phosphate, Potassium, Public lands-mineral resources, Reporting and recordkeeping requirements, Sodium, Sulphur, Surety bonds

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 3500 as follows:

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

1. Amend the authority citation for part 3500 to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189, 192c, and 209; 43 U.S.C. 1701 *et seq.*; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

2. Revise §3513.11 to read as follows:

§3513.11 May BLM relieve me of the lease requirements of rental, minimum royalty, or production royalty while continuing to hold the lease?

Yes. The BLM has a process that may allow you temporary relief from these lease requirements in accordance with 30 U.S.C. 209.

3. Revise §3513.15 to read as follows:

§3513.15 How do I apply for reduction of rental, royalties, or minimum production?

You must submit your application with the following information for all leases involved:

- (a) The serial numbers;
- (b) The name of the record title holder(s);
- (c) The name of the operator and operating rights owners if different from the record title holder(s);
- (d) A description of the lands by legal subdivision, if the application is for a portion of the lease;
- (e) A map showing the serial number and location of each mine or excavation and the extent of the mining operations;
- (f) If you are applying for relief from the minimum production requirement, the information sufficient to demonstrate why you did not attain the minimum production;
- (g) Justification showing why you cannot successfully operate the mines under the royalty or rental fixed in the lease and other lease terms;

(h) Any other information that BLM needs to determine whether the request satisfies the standards in §3513.12 of this part.

4. Add a new § 3513.17 to read as follows:

§3513.17 How will BLM implement a reduction of rental, royalties, or minimum production?

(a) The BLM may reduce rental, royalties, or minimum production on its own initiative if the BLM determines, based on available information, that it is necessary to promote development of the mineral resource. Such a reduction may be for a specific geographic area, or on an industry-wide basis.

(b) The BLM may reduce rental, royalties, or minimum production in response to an application submitted under §3513.15 if the application meets the criteria in §3513.12.

(c) The BLM may grant a reduction not to exceed:

(1) 10 years from the date of implementation under paragraph (a) of this section,

or

(2) 10 years from the date of the decision to approve the application submitted under paragraph (b) of this section, or for a maximum quantity of mineral production as determined by the BLM.