



RAG American Coal Holding, Inc.

July 3, 2001

Minerals Management Service
Minerals Revenue Management
Regulations and FOIA Team
P.O. Box 25165, MS 320B2
Denver, CO 80225-0165

Re: Comments on Proposed Solid Mineral Reporting Requirements
(66 Fed. Reg. 30121)

Dear Sir or Madam:

On June 5, 2001, the Department of Interior requested comments on their Minerals Management Service's ("MMS") proposed reporting requirements for solid minerals. This letter provides RAG American Coal Holding, Inc.'s ("RAG") comments on the proposed reporting requirements. RAG's subsidiaries hold federal coal leases in the states of Colorado, Utah and Wyoming.

RAG is a participating member of the solid mineral operational model that was initiated by the MMS to test proposed reengineered business processes and new reporting formats.

RAG supports the proposed Form MMS-4430 and the proposed Internet submission. The replacement of the current eight reporting forms by the Form MMS-4430 with its functionality capabilities simplifies the reporting of solid mineral royalties.

However, RAG has significant concerns the proposed submission of sales summaries (§ 210.202), sales contracts (§ 210.203), facility data (§ 210.204) and additional documents or evidence (§ 210.205) will increase our cost to comply, with less assurance that we are in compliance, compared to the current reporting system.

We are concerned because the proposed rule significantly changes the current rules regarding the submission of information to the MMS and goes well beyond the requirements of our leases with the Bureau of Land Management ("BLM"). The proposed rule is changing the current rule's "upon request" concept to "a required" concept, with the lessee responsible for determining the documents and other supplemental information that has to be provided without specific guidance or direction. Our lease agreements with the BLM only require RAG to provide "information and documents that are *reasonably necessary* to verify lessee compliance with the terms and conditions of the lease." Emphasis added.

In addition, RAG is concerned that the proposed rule has deleted the current confidentiality section at § 206.263(d) and that the information required by the rule would not be maintained by the MMS as proprietary information.

Except for the one comment on § 210.201(a)(1) addressed below, RAG does not have objection to the implementation of the proposed Form MMS-4430 provisions. However, and as discussed below in RAG's preliminary comments, RAG has pronounced and serious concerns with respect to the remainder of the proposed regulations. In order to be able to fully develop and present those concerns, RAG requests that the comment period be extended for a period of 60 additional days.

RAG's preliminary concerns with the proposed rule are discussed below.

THE AVERAGE REPORTING BURDEN ESTIMATES ARE UNDERSTATED

RAG believes that the average reporting burden estimates contained in the proposed rule are greatly understated. A copy of RAG's comments regarding the accuracy of the burden estimates submitted to the MMS's Information Collection Clearance Officer is attached as Exhibit A.

IMPLIES THAT ROYALTY PAYMENT HAS TO BE SUBMITTED AT THE SAME TIME AS FILING MMS FORM-4430

Proposed § 210.201(a)(1) states, "you must submit a completed Form MMS-4430 for all coal and other solid minerals produced from Federal and Indian leases *accompanied by all required royalty and rental payments* (except for first year rentals)." Emphasis added.

A literal reading of the proposed rule would indicate that a solid mineral lessee has to make his payment for royalty liability on the same day that the Form MMS-4430 is submitted. If this is the intent of the proposed rule, it is a marked departure from the current practice. If insisted upon, lessees will simply not submit their Form MMS-4430 until the last day of the month when they are making their wire transfer payment for the royalty liability. In addition, the proposed rule is in conflict with the current payment procedures for solid minerals in § 218.200 and § 218.201.

RAG recommends that the phrase "accompanied by all required royalty and rental payments (except for first year rentals)" be deleted from the proposed rule.

WHAT IS AN ELECTRONIC REPORTING SERVICE?

Proposed § 210.201(c)(3) refers to the undefined phrase "electronic reporting service" in describing when a lessee is not required to report electronically.

Even though RAG will have to report electronically, we do not have a clue to the meaning of this phrase and believe that the smaller and less sophisticated lessees that the subsection applies to will be as equally clueless.

SEPARATE SALES SUMMARY FOR EACH REMOTE STORAGE SITE IS BURDENSOME

Proposed § 210.202(a) states, “if you sell from five or fewer remote storage sites, you must submit a sales summary for each site.”

RAG opposes the requirement to submit a sales summary for each remote site. Remote site sales are included as sales for the mine providing the coal to the remote site. We believe that it is unnecessary to have a separate sales summary since the MMS will already have a copy of the sales contract that indicates that the coal is being sold from a remote site that has been produced from a specific mine. If RAG has one remote site, we will have to create two new internal reports to comply with this provision. One report for the remote site and another report for the operating mine to exclude the sales made by the remote site.

PROCESSING OR WASHING AND TRANSPORTATION COSTS SUBMISSION IS AMBIGUOUS

Proposed § 210.202(a) includes a table to determine the time frames for submitting sales summaries and the other data elements that the lessee must include. The proposed rule is unclear regarding the cost information to be submitted for data elements 4 (processing or washing costs) and 5 (transportation costs).

Since the proposed rule provides no guidance regarding the cost information to be submitted for processing or washing costs and transportation costs, RAG must assume that these costs are to be calculated and submitted monthly pursuant to § 206.259 (Determination of washing allowances) and § 206.262 (Determination of transportation allowances).

If this is the intent of the proposed rule, RAG objects to this information submission requirement because it will significantly increase the cost to comply. The amount of the increased cost depends upon whether these costs are incurred under an arm’s-length or non-arm’s-length contract. The calculation under a non-arm’s-length contract will require significantly more time than the calculation under an arm’s-length contract. In addition, some of the cost data pursuant to those subsections is calculated on an annual basis.

SUBMISSION OF COAL SIZE DATA ELEMENT IS UNNECESSARY

The table at § 210.202(a) also requires that the size of coal shipped to each customer be submitted monthly.

RAG objects to having to provide sizing information by customer each month for the following reasons:

1. RAG does not indicate coal size by customer on any current internal report that we prepare. Therefore, we would have to create a new report to submit to the MMS.
2. The MMS will already have the individual customer contracts that detail the coal size requirement.

APPEARS TO REQUIRE SUBMISSION OF SALES SUMMARY INFORMATION FOR MONTHS WHEN THERE IS NO FEDERAL PRODUCTION

Proposed § 210.202(b)(1) states, “for leases with ad valorem royalty terms (that is, leases for which royalty due is dependent upon sales value), you must submit your sales summaries monthly at the same time you submit Form MMS-4430.” The proposed rule implies that even if you do not have federal production in a month that you are required to submit the sales summaries for that month if you have an ad valorem royalty term lease.

RAG agrees that Form MMS-4430 must be filed for months when there is no federal production. However, we do not agree that sales summaries should be provided for any month with no federal production. RAG recommends that the following be added to this subsection “* * * Form MMS-4430 *reporting federal production. In the event that you did not have federal production in a specific month, you must submit sales summaries only if we specifically request you to do so.*”

SUBMISSION OF SALES CONTRACTS IS AMBIGUOUS

Proposed § 210.203(a) requires the lessee to “submit sales contracts, agreements, contract amendments, or other documents that affect gross proceeds received for the sale of all coal and other solid minerals.” The phrase “other documents that affect gross proceeds received for the sale of all coal and other solid minerals” is not defined in the proposed regulation and places an undue burden upon the lessee to determine what other documents must be submitted.

Does this include every document received from a third-party or worksheet created by the lessee to support the amount invoiced (i.e. train manifest with weights, individual shipment quality analysis)? Does this include all the supporting documentation to a price escalation calculated pursuant to the terms of the contract? Does this include all correspondence with each customer? Because the phrase “other documents” is not defined, RAG has to assume the answers to the above questions are YES.

RAG requests that the phrase “other documents that affect gross proceeds received” be eliminated from the final rule. Elimination of this phrase relieves the lessee of the impossible burden of trying to determine what “other documents” must be submitted. The MMS could request these “other documents” pursuant to RAG’s recommended changes to § 210.205(a) of the proposed rule.

SUBMISSION OF SALES CONTRACTS QUARTERLY IS AMBIGUOUS AND BURDENSOME

Proposed § 210.203(b)(1) requires the submission of sales contracts quarterly. The proposed rule implies that a lessee is required to submit a copy of a multi-period contract each quarter. In addition, the proposed rule is ambiguous regarding what is to be submitted quarterly and when the quarterly report is due. For example, are all contracts entered into during the first quarter required to be submitted by March 31st?

RAG believes the proposed rule should be clarified to indicate that a multi-period contract is only submitted once. In addition, since the majority of the coal contracts are prospective, RAG's reporting burden is increased unnecessarily by the requirement to submit contracts quarterly. We believe that submitting contracts semi-annually is more appropriate.

If RAG's proposed change to § 210.203(a) discussed above is accepted, we recommend that § 210.203(b)(1) be revised as follows "*For coal and metal production, you must submit semi-annually any new sales contracts, agreements, and contract amendments entered into. The January through June reporting period is due on July 31st and the July through December reporting period is due on January 31st of the following year.*"

In addition the quarterly requirement in § 210.10(c)(20) should be changed to semi-annually.

APPEARS TO REQUIRE SUBMISSION OF FACILITY DATA FOR MONTHS WHEN THERE IS NO FEDERAL PRODUCTION

Proposed § 210.204(a)(1) states, "if you operate a wash plant, refining, ore concentration, or other processing facility for any coal, sodium, potassium, metals, or other solid minerals produced from Federal or Indian leases with ad valorem royalty terms, you must submit facility data, regardless of whether the facility is located on or off lease." The proposed rule implies that even if you do not have federal production in a month that you are required to submit the facility data for that month if you have an ad valorem royalty term lease.

RAG does not agree that facility data should be provided for any month with no federal production. RAG recommends that the following be added to § 210.204(a)(2) "* * * Form MMS-4430 reporting federal production. In the event that you did not have federal production in a specific month, you must submit facility data only if we specifically request you to do so."

§ 210.205(a) REQUIREMENTS EXCEED THE CURRENT FEDERAL AND INDIAN LEASE TERMS

Proposed § 210.205(a) allows the MMS "to request detailed statements, documents, or other evidence that supports our compliance and asset management responsibilities."

This subsection violates RAG's contractual rights with the BLM. Our leases state that "[lessee] shall allow lessor access to and copying of documents reasonably necessary to verify [lessee] compliance with terms and conditions of the lease." Under the lease terms, RAG is only required to provide documentation to determine the compliance with the terms and conditions of the lease and not to provide information to the MMS to support their compliance and asset management responsibilities.

Current § 206.250(b) provides that if the specific provisions of any lease are inconsistent with any MMS regulation, the lease provision shall govern to the extent of that inconsistency.

RAG recommends that the proposed § 210.205(a) be revised as follows "*The MMS may request other information and documents that are reasonably necessary to verify lessee compliance with the terms and conditions of the lease.*"

REFERENCES TO MAILING ADDRESSES SHOULD BE DELETED

The proposed rule contains numerous subsections regarding where to mail reports and other information when they are not submitted electronically.

Since mailing addresses do change, RAG believes that all references to mailing addresses should be deleted from the proposed rule. If the mailing addresses are not deleted, the rule will have to be amended in the future when the mailing address does change.

RAG recommends that all subsections containing mailing address references should be revised as follows "*Instructions for submitting * * * * by U.S. Postal Service mail service or by courier service are available on our Internet web site or you may contact us toll free at 1-888-201-6416.*"

CONFIDENTIALITY

The proposed regulation deletes the current confidentiality provisions at § 206.263(d) and therefore the proposed regulation does not have a confidentiality section for the information required to be submitted.

RAG recommends that a confidentiality section be added as § 210.206 that reads as follows "*Information obtained under this Part 210 shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).*"

CONCLUSION

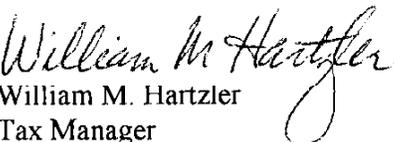
Although RAG supports the objective of the revisions to the solid mineral reporting program, we have significant concerns regarding several of the information submission requirements in the proposed rule. Our comments have identified areas that are vague and overreaching and, as such, increase rather than reduce RAG's cost to comply.

While Form MMS-4430 is a marked improvement to the reporting of solid mineral royalties, the supplemental information requirements fall far short of the agency's objectives and create new and substantial burdens on RAG. The requirement to provide all "other documents" is so broad and vague that it leaves the most reasonable and prudent lessee with the impossible burden of determining what to submit and subject to the whim of the agency as to whether the burden has been met. RAG should be required to provide no more than that information specifically requested by the MMS and is necessary to verify our compliance with the terms and conditions of our leases.

For these reasons and because of the October 1, 2001 implementation date for the Form MMS-4430, RAG strongly urges that the MMS withdraw and reevaluate the information reporting requirements that are not essential to the timely implementation of the Form MMS-4430.

RAG appreciates the opportunity to comment on this proposed rule.

Sincerely,


William M. Hartzler
Tax Manager

Attachment

Cc C. C. Bromley
G. A. Walker
F. J. Wood