
From: Ireland, Nadine [irelandn@triton-coal.com]
Sent: Thursday, July 05, 2001 9:54 AM
To: 'MRM.comments@mms.gov'
Subject: RIN 1010-AC86



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

Attention: RIN 1010-AC86

Re: Comments on Proposed Solid Mineral Reporting Requirements

Dear Sir or Madam:

The Department of Interior requested comments on the Minerals Management Service's (MMS) proposed reporting requirements for solid minerals. (66 Fed. Reg. 30121) This letter provides Triton Coal Company, LLC's (Triton) comments on the proposed reporting requirements.

Triton supports the proposed Form MMS-4430 and the proposed Internet submission. The form will replace multiple reports that are currently providing the information requested by the MMS. However, Triton has significant concerns regarding the proposed submission of sales summaries (§ 210.202), sales contracts (§ 210.203), facility data (§ 210.204) and additional documents or evidence (§ 210.205) due to the increases in our costs 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 Triton to provide "information and documents that are reasonably necessary to verify lessee compliance with the terms and conditions of the lease."

In addition, Triton 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, Triton does not have objection to the implementation of the proposed Form MMS-4430 provisions. However, and as discussed below in Triton's preliminary comments, Triton 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, Triton requests that the comment period be extended for a period of 60 additional days.

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

THE AVERAGE REPORTING BURDEN ESTIMATES ARE UNDERSTATED

Triton believes that the average reporting burden estimates contained in the proposed rule are greatly understated. A copy of Triton'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.

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

SUBMISSION OF COAL SIZE DATA ELEMENT IS UNNECESSARY

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 requires that the size of coal shipped to each customer be submitted monthly.

Triton objects to having to provide sizing information by customer each month as Triton 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.

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 there is not any federal production in a month, the lessee is required to submit the sales summaries for that month if an ad valorem royalty term lease applies.

Triton agrees that Form MMS-4430 must be filed even 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. Triton 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 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?

Triton requests that § 210.203 be eliminated from the final rule. Elimination of this section relieves the lessee of the impossible burden of trying to determine what "documents" must be submitted necessary for determining the affects on gross proceeds. The MMS could request the specific documents necessary to determine the affects on gross proceeds pursuant to Triton's recommended changes to § 210.205(a) of the proposed rule. The information requested under the Proposed § 210.202 provides adequate data that is reasonably necessary to determine whether the lessee is in compliance with the terms and conditions of the lease.

§ 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." The proposed rule violates Triton'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, Triton 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.

Triton 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, Triton 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.

Triton recommends that all subsections containing mailing addresses references should be revised "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.

Triton 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)."

<<Exhibit A.rtf>>

Triton Coal Company, LLC
P.O. Box 3027
Gillette, WY 82717

July 3, 2001

Minerals Management Service
ATTN: Information Collection Clearance Officer
OMB Control Number 1010-0120
Mail Stop 4230
1849 C Street, NW
Washington, D.C. 20240

Re: Comments on the Accuracy of the Burden Estimates in Proposed Solid Mineral Reporting Requirements

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. (66 Fed. Reg. 30121) This letter provides Triton Coal Company, LLC's (Triton) comments on the accuracy of the burden estimates in the proposed rule. Triton holds federal coal leases in the State of Wyoming.

Triton 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. Triton believes that the average reporting burden for completing Form MMS-4430 in the proposed rule is reasonable.

However, Triton has significant concerns that the average reporting burden estimates for submitting sales summaries and contracts and contract amendments contained in the proposed rule are greatly understated. (66 Fed. Reg. 30126 and 30129)

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 Triton to provide "information and documents that are *reasonably necessary* to verify lessee compliance with the terms and conditions of the lease." Emphasis added.

Triton's concerns with the average reporting burden estimates contained in the proposed rule are discussed below.

SALES SUMMARIES

The proposed rule's estimate for the average reporting burden for sales summaries is 15 minutes per month. As discussed below, because the proposed rule is unclear regarding some of the sales

summary information to be submitted, Triton believes that the average reporting burden for sales summaries is understated.

CONTRACTS AND CONTRACT AMENDMENTS

The proposed rule's estimate for the average reporting burden for contracts and contract amendments is one hour per year or 15 minutes for each quarterly submission. As discussed below, Triton believes that the average reporting burden for contracts and contract amendments is significantly understated.

Proposed § 210.203(a) defines sales contracts to be “sales contracts, agreements, contract amendments, or other documents that affect gross proceeds received for the sale of all coal and other solid minerals produced from Federal and Indian leases with ad valorem terms.”

Triton estimates that it will take between two and six hours per quarter for a lessee to submit contracts, agreements and contract amendments. The actual time required to submit the contracts, agreements and contract amendments varies due to the number of customers each lessee has. The entire customer file has to be examined each time a contract submission would be made to determine if any documents have been filed since a prior submission. In addition, an index would have to be maintained that documents the previously submitted contracts to the MMS in order to avoid duplicate document submissions and to identify documents in the file that need to be submitted.

Included in the definition of sales contracts in § 210.203(a) is the phrase “other documents that affect gross proceeds received for the sale of all coal and other solid minerals.” Because the phrase “other documents that affect gross proceeds” is an all-encompassing definition, the lessee has the impossible burden of trying to determine what “other documents” must be submitted. In order to comply with the contract submission provision in the proposed rule, 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), all supporting documentation and worksheets to a price escalation calculated pursuant to the terms of the contract and all correspondence with each customer will have to be reviewed by a knowledgeable individual within the lessee's organization to determine if the document has to be submitted to the MMS. Triton is unable at this time to make an estimate of the time that might be required to comply with this portion of the proposed rule each quarter.