



National Mining Association
Foundation For America's Future

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David S. Guzy
Chief, Rules and Procedures,
Royalty Management Program
Minerals Management Service
U.S. Department of the Interior
P.O. Box 25165, MS 3101
Denver, Colorado 80225-0165

RE: Proposed Rule for the Delegation of Royalty Management
Functions to States. 62 Fed. Reg. 19967 (April 24, 1997).

Dear Mr. Guzy:

This letter responds to the Minerals Management Service's proposed rule to delegate federal royalty management functions to States pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Pub. L. 104-185, August 13, 1996, 110 Stat. 1700. NMA's principal concern with the proposal is the assumption that the RSFA § 3 amendments to § 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) apply to Federal Leasable Solid Minerals. NMA submits, as explained further below, that the RSFA amendments expanding the responsibilities the Secretary may delegate to States for oil and gas *do not* apply to leasable solid minerals on Federal lands.

1. Authority To Delegate To States Royalty Related Responsibilities For Solid Minerals.

The authority to delegate to the States any part of the Secretary's royalty management responsibilities for federal coal and other leasable solid minerals arises exclusively under Title I of the Department of the Interior and Related Agencies Appropriations Act of 1992, Pub. L. 102-154, November 13, 1991, 105 Stat. 1001 (codified at 30 U.S.C. § 196). The Appropriations Act specifically sets forth the only delegable responsibilities as: the conduct of "audits, investigations, and inspections." 30 U.S.C. § 196. Furthermore, the Act purposefully references these responsibilities as those "under the authorizing leasing statutes, leases and regulations promulgated thereto."

Id. For purposes of coal and other leasable solid minerals, the authorizing leasing statute is the Mineral Leasing Act, 30 U.S.C. § 181 et. seq.; and, the audit and inspection regulations promulgated pursuant to the Mineral Leasing Act are 30 C.F.R. § 217.200 (Coal) and § 217.250 (Other Solid Minerals).

2. The Applicability to Coal and Other Solid Minerals of the Expanded Delegable Responsibilities Under RSFA's Amendments to § 205 of FOGRMA.

The preamble to the proposal simply opines that Pub. L. 102-154 provides MMS authority to delegate royalty management functions to States. However, Pub. L. 102-154 only authorizes the delegation of "audits, investigations and inspections" for solid minerals, not the expanded responsibilities that may now be delegated to States under § 205 of FOGRMA, as amended, for oil and gas.

To the extent that the proposal is based upon the view that the expanded responsibilities for oil and gas that may be delegated pursuant to amended § 205 of FOGRMA also may be delegated to States for coal and solid minerals, we submit that such a view lacks a statutory basis. Perhaps, the MMS' proposed view arises from the misconception set forth in the opening paragraph of its draft policy of March 29, 1997 that describes RSFA as amending, among other laws, "the Mineral Leasing Act of 1920." In fact, RSFA does not amend the Mineral Leasing Act. There is simply no indicia in the statutory text, legislative history, or the codification in the United States Code that RSFA amends the Mineral Leasing Act. *Compare* 30 U.S.C.A. § 1701 (1997 Supplement) (explaining that RSFA enacted § 1721(a), 1724, 1725 and 1726; amended sections 1702, 1712, 1721 and 1735; repealed § 1339 of Title 43; and enacting provisions set out as codification notes in § 1732 of Title 30) *with* 30 U.S.C.A. §§ 181-287 (1997 Supp.) (lacking any Historical or Statutory Notes referencing RSFA).

As explained at the outset, the DOI Appropriations Act of 1992 supplies the sole source of authority for delegating royalty responsibilities for coal and other solid minerals, and those responsibilities are expressly set forth as audits, investigations and inspections. The proposed rule appears to suffer from the same misconception about the application of RSFA to solid minerals as the agency's March 20, 1997 draft policy. The policy memorandum provides that "the functions delegable for oil and gas should be delegated for solids ... where MMS, *to the extent the FOGRMA authority for the underlying function applies to solid minerals and geothermal leases*, has the authority." Memo. at 8 (emphasis supplied). The critical point remains that no FOGRMA authority for any of these delegable functions (i.e. responsibilities) applies to solid minerals. Again, the authority to delegate responsibilities does not arise from

FOGRMA, but solely from the 1992 Appropriations Act amendments to the Mineral Leasing Act as codified at 30 U.S.C. § 196.

The reference to FOGRMA § 205 in 30 U.S.C. § 196 pertains to the *terms and conditions* -- not the responsibilities -- under which the Secretary may delegate the "audit, investigations and inspections" responsibilities explicitly set forth in § 196. The principal terms and conditions for delegation are set forth in FOGRMA § 205(b). Likewise, the references in § 196 to FOGRMA sections 203 (disclosure and confidentiality) and 206 (shared civil penalties) also provide additional "terms and conditions" related to the delegable responsibilities for audit activities. The phrase in 30 U.S.C. § 196, "on the same terms and conditions as those authorized for oil and gas leases under Section 202, 203, 205 and 206 of the Federal Oil and Gas Royalty Management Act of 1982," is not language that makes these provisions of FOGRMA directly applicable to coal and solid minerals. Language of that nature follows directly thereafter in the subsequent proviso that applies section 204 of FOGRMA to coal and other solid mineral leases as follows:

Provided further, that section 204 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1734) *shall apply* to leases authorizing exploration for or development of coal, any other solid mineral, or geothermal steam on any Federal lands...

30 U.S.C. § 196.

In short, the distinct statutory text within the same section of the 1992 Appropriations Act demonstrates Congress' deliberate intent to apply FOGRMA directly to solid minerals for purposes of § 204, while referencing other FOGRMA provisions for the sole purpose of providing guidance as to the terms and conditions for delegation. In other words, the statutory text of § 196 itself discloses that Congress did not expressly or implicitly amend the Mineral Leasing Act for purposes of incorporation of FOGRMA § 205 as to the scope of the delegable responsibilities for coal or other solid minerals.

A policy that would apply the expanded delegable responsibilities for oil and gas under amended § 205 to coal and other solid minerals can only rest upon the view that RSFA amended 30 U.S.C. § 196 by implication. However, an amendment of a prior act, to be effective, must be express. Amendments by implication are not favored. *Sutherland Stat Const* § 22.13 (5th Ed). Absent expressed intent, subsequent legislation is not presumed to amend another statute not under consideration while enacting the later

law. *Id.*¹ As discussed below, there is simply no basis in the text of RSFA or its legislative history that Congress intended to amend § 196 or any aspect of the Mineral Leasing Act when it enacted RSFA.

There is no textual evidence in the statutory language or structure of RSFA to evince any intent to amend 30 U.S.C. § 196, and thus, expand the delegable responsibilities for coal and other solid minerals. Starting with the short title of Pub. L. 104-185 ("Federal Oil and Gas Royalty Simplification and Fairness Act of 1996"); proceeding to the stated purpose ("to improve the management of royalties for Federal and Outer Continental Shelf oil and gas leases"); and ending with a textual review of RSFA's substantive provisions which are replete with language referring to oil and gas leases and FOGRMA; the only purpose gleaned from RSFA is that Congress intended to amend FOGRMA with respect to the management of oil and gas leases. *See e.g.* RSFA § 11, 110 Stat. 1717 ("[T]his Act and the amendments made by this Act shall apply with respect to the production of oil and gas ..."). Indeed, one of the few references to the Mineral Leasing Act confirms congressional intent not to amend or alter the MLA as it applies to coal and other solid minerals. In RSFA § 3 (amending § 205(f) of FOGRMA) Congress sets forth the allocation, for purposes of § 35(b) of the MLA, of costs for compensation of States for delegated responsibilities for oil and gas leases. In the same provision, Congress expressly set forth its intent not to alter the allocation authority for coal and other solid minerals as follows:

Nothing in this section affects the Secretary's authority to make allocations under section 35(b) for non-oil and gas mineral activities.

110 Stat. 1704.

^{1/} This canon of statutory construction controls even when the later statute is not entirely harmonious with the earlier one. But, even here, the two statutes are harmonious. Both § 196 and FOGRMA § 205 as amended through RSFA can be read to give effect to both. The explicit language of § 196 setting forth the audit, investigation and inspection responsibilities for coal and other solid minerals is not inconsistent with the broader range of responsibilities that now may be delegated for oil and gas under RSFA. Simply put, the difference in the scope of delegable responsibilities for solid minerals under § 196 and oil and gas under RSFA does not lead to the conclusion that the two Acts cannot coexist absent a reading that RSFA amended implicitly § 196. Administrative convenience will not suffice as a reason to override the absence of congressional intent to amend § 196.

This provision leaves intact the compensation provisions in 30 U.S.C. § 196 for delegation of audits, investigations and inspections for coal and other solid minerals, as well as the allocation of those costs under § 35(b) of the MLA.

The legislative history of RSFA confirms the intent one readily gleans from the text and structure of the Act. The legislative history explains that:

The bill would establish clear and equitable provisions for the effective and efficient administration of leases by the Secretary of the Interior to further exploration and development of *oil and gas resources*.

H.R. Rep No. 667, 104th Cong., 2d Sess. 13 (1996).

The history goes on to summarize the changes to:

procedures and obligations related to the collection of onshore and offshore *oil and gas* royalty payments for Federal lands ...

Id. at 14.

Not a single word appears to suggest that Congress intended to extend the expanded delegation of responsibilities to coal and other solid minerals.

Frankly, to accept a view that RSFA amends, either expressly or by implication, the responsibilities that may be delegated to the States under the Mineral Leasing Act opens the door to similar arguments that would extend RSFA's other substantive provisions to coal and other solid minerals. We note that the agency's March 20, 1997 draft policy memorandum provides that many of these provisions can not be extended beyond oil and gas leases "unless current statutes pertaining to solid minerals and geothermal resources is [sic] amended." *See., e.g.,* Memo. at 3 (discussing default provisions for appeals); 3 (Statute of Limitations -- In the absence of enabling legislation, no authority for statute of limitation or audits of solid minerals leases); 4 (Interest calculations -- interest does not accrue in absence of express provisions in a statute or contract); 4 (Adjustments and Refunds -- statutory provisions under RSFA apply only to Federal oil and gas). In sum, since, according to MMS, there is no statutory authority to extend certain RSFA provisions designed to "improve efficiency and the collection of

royalties" beyond oil and gas leases, then no basis exists for distinguishing the expanded delegated responsibilities by their extension to solid minerals.²

3. Conclusion

The MMS lacks the statutory authority to extend the expanded delegable responsibilities for oil and gas set forth in RSFA § 3 (amending FOGRMA § 205) to coal or other leasable solid minerals on Federal lands. All policies or rulemakings adopted by MMS must refrain from the unlawful extension of these expanded delegable responsibilities to coal and other solid minerals.

In view of the absence of statutory authority, NMA submits that it would be a grave disservice to the States for MMS to suggest through a rule or policy the extension of the expanded delegable responsibilities under RSFA to coal and solid minerals. As the States evaluate whether to accept the expanded responsibilities that may be delegated for oil and gas leases under RSFA, MMS should not mislead them with the apparent assumption that the Secretary's authority to delegate the same responsibilities for coal and other solid minerals is beyond serious legal doubt.

Sincerely,



Harold P. Quinn, Jr.
Senior Vice President and
General Counsel

^{2/} We do not suggest that MMS cannot consider the adoption of rules related to internal operating procedures for such matters as appeals and bonding that would improve efficiency and be more cost effective for industry and the government. But such matters were already within MMS's authority prior to RSFA. For example, the agency is already authorized to place deadlines on deciding appeals and allow lessees to seek judicial review in the absence of a decision within a certain time frame.