Title 43: Public Lands: Interior

PART 3400—COAL MANAGEMENT: GENERAL

Contents

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

SOURCE: 44 FR 42609, July 19, 1979, unless otherwise noted.

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§ 3400.0-3 Authority.

(a) These regulations are issued under the authority of and to implement provisions of:

(1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.).*

(2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359 *et seq.).*

(3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 *et seq.).*

(4) The Surface Mining Control and Reclamation Act of 1977, August 3, 1977 (30 U.S.C. 1201 *et seq.).*

(5) The Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521-531 *et seq.).*

(6) The Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 *et seq.).*

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.).*

(8) The Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092).

(9) The Act of October 30, 1978 (92 Stat. 2073-2075).

(b) Specific citations of authority in subsequent subparts of this Group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

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§ 3400.0-5 Definitions.

As used in this group:

(a) *Alluvial valley floor* has the meaning set forth in 30 CFR Chapter VII.

(b) *Authorized officer* means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(c) *Bonus* means that value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership that is paid as part of the consideration for receiving a lease.

(d) *Bypass coal* means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any mining operation other than that of the applicant for either an emergency lease under the provisions of § 3425.1-4 of this title or a lease modification.

(e) *Casual use* means activities which do not ordinarily lead to any appreciable disturbance or damage to lands, resources or improvements, for example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over already established roads and trails.

(f) *Certificate of bidding rights* means a right granted by the Secretary to apply the fair market value of a relinquished coal or other mineral lease or right to a preference right coal or other mineral lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales, or as a credit against the payment required for a coal lease modification.

(g) *Coal deposits* mean all Federally owned coal deposits, except those held in trust for Indians.

(h) *Department* means the United States Department of the Interior.

(i) *Director* means the Director of the Bureau of Land Management unless otherwise indicated.

(j) *Environmental assessment* means a document prepared by the responsible Federal agency consistent with 40 CFR 1508.9.

(k) *Exploration* has the meaning set forth in § 3480.0-5(a)(17) of this title.

(l) *Exploration license* means a license issued by the authorized officer to permit the licensee to explore for coal on unleased Federal lands.

(m) *Exploration plan* has the meaning set forth in § 3480.0-5(a)(18) of this title.

(n) *Fair market value* means that amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell or lease to a knowledgeable purchaser who desires but is not obligated to buy or lease.

(o) *Federal lands* mean lands owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands, including surface estate, mineral estate and coal estate, but excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(p) *Governmental entity* means a Federal or state agency or a political subdivision of a state, including a county or a municipality, or any corporation acting primarily as an agency or instrumentality of a state, which produces electrical energy for sale to the public.

(q) *Interest* in a lease, application or bid means: any record title interest, overriding royalty interest, working interest, operating rights or option, or any agreement covering such an interest; any claim or any prospective or future claim to an advantage or benefit from a lease; and any participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from the lease based on or pursuant to any agreement or understanding existing when the application was filed or entered into while the lease application or bid is pending. Stock ownership or stock control does not constitute an interest in a lease within the meaning of this definition. Attribution of acreage to stock ownership interests in leases is covered by § 3472.1-3(b) of this title.

(r) *Lease* means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which grants the exclusive right to explore for and extract coal. In provisions of this group that also refer to Federal leases for minerals other than coal, the term *Federal coal lease* may apply.

(s) *Lease bond* means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or exploration plan. This is the same as the *Federal lease bond* referred to in 30 CFR 742.11(a).

(t) *Licensee* means the holder of an exploration license.

(u) *License to mine* means a license issued under the provisions of part 3440 to mine coal for domestic use.

(v) *Logical Mining Unit* has the meaning set forth in § 3480.0-5(a)(22) of this title.

(w) *Logical Mining Unit reserves* has the meaning set forth in the term *logical mining unit recoverable coal reserves* in § 3480.0-5(a)(23) of this title.

(x) *Maximum economic recovery* has the meaning set forth in § 3480.0-5(a)(24) of this title.

(y) *Mineral leasing laws* mean the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359).

(z) *Mining plan* means a resource recovery and protection plan as described in § 3480.0-5(a)(39) of this title.

(aa) *Mining Supervisor* means the authorized officer.

(bb) *Mining unit* means an area containing technically recoverable coal that will feasibly support a commercial mining operation. The coal may either be Federal coal or be both Federal and non-Federal coal.

(cc) *Operator* means a lessee, exploration licensee or one conducting operations on a lease or exploration license under the authority of the lessee or exploration licensee.

(dd) *Permit* has the meaning set forth in 30 CFR Chapter VII.

(ee) *Permit area* has the meaning set forth in 30 CFR Chapter VII.

(ff) *Public bodies* means Federal and state agencies; political subdivisions of a state, including counties and municipalities; rural electric cooperatives and similar organizations; and nonprofit corporations controlled by any such entities.

(gg) *Qualified surface owner* means the natural person or persons (or corporation, the majority stock of which is held by a person or persons otherwise meeting the requirements of this section) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (gg) (1) and (2) of this section for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (gg) (1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this section.

(hh) *Reserves* has the meaning set forth in the term *recoverable coal reserves* in § 3480.0-5(a)(37) of this title.

(ii) *Secretary* means the Secretary of the Interior.

(jj) *Sole party in interest* means a party who is and will be vested with all legal and equitable rights under a lease, bid, or an application for a lease. No one is a sole party in interest with respect to a lease or bid in which any other party has any interest.

(kk) *Split estate* means land in which the ownership of the surface is held by persons, including governmental bodies, other than the Federal government and the ownership of underlying coal is, in whole or in part, reserved to the Federal government.

(ll) *Substantial legal and financial commitments* means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling and preparation, extraction or storage facilities and other capital intensive activities. Costs of acquiring the coal in place or of the right to mine it without an existing mine are not sufficient to constitute *substantial legal and financial commitments.*

(mm) *Surface coal mining operations* means activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28).

(nn) *Surface management agency* means the Federal agency with jurisdiction over the surface of federally owned lands containing coal deposits, and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the Forest Service.

(oo) *Surface Mining Officer* means the regulatory authority as defined in 30 CFR Chapter VII.

(pp) *Valid existing rights* as used in § 3461.1 of this title is defined in 30 CFR 761.5.

(qq) *Written consent* means the document or documents that a qualified surface owner has signed that:

(1) Permit a coal operator to enter and commence surface mining of coal;

(2) Describe any financial or other consideration given or promised in return for the permission, including in-kind considerations;

(3) Describe any consideration given in terms of type or method of operation or reclamation for the area;

(4) Contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(5) Contain a full and accurate description of the area covered by the permission.

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) *Arm's length transaction* means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) *Bracket* means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of part 3480 of this title on the date of first production.

(3) *Controlled by or under common control with,* based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) *Entity* means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) *Holds and has held* means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The *holds and has held* requirement of section 2(a)(2)(A) of the Act is working interest holder-specific for each lease. *Working interest* includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) *Producing* means actually severing coal. A lease is also considered producing when:

(i) The operator/leasee is processing or loading severed coal, or transporting it from the point of severance to the point of sale; or

(ii) Coal severance is temporarily interrupted in accordance with §§ 3481.4-1 through 4-4 of this chapter.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33133, 33134, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985; 51 FR 43921, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987; 62 FR 44369, Aug. 20, 1997]

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§ 3400.1 Multiple development.

(a) The granting of an exploration license, a license to mine or a lease for the exploration, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

(b) The presence of deposits of other minerals or the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

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§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;

(2) The National Wildlife Refuge System;

(3) The National Wilderness Preservation System;

(4) The National System of Trails;

(5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns, and villages;

(7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and

(8) National Recreation Areas designated by law;

(b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States; and

(c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

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§ 3400.3 Limitations on authority to lease.

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§ 3400.3-1 Consent or conditions of surface management agency.

Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits, and subject to such conditions as that officer may prescribe to insure the use and protection of the lands for the primary purpose for which they were acquired or are being administered.

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§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

(a) Produces electrical energy for sale to the public;

(b) Is located in the state in which the leased lands are located; and

(c) Has production facilities in that state, and will use the coal produced from the lease within that state.

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§ 3400.3-3 Department of Agriculture lands.

Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within the National Forest System, provided that such leases may not be issued on lands within a national forest unless the tract is assessed to be acceptable for all or certain stipulated methods of surface coal mining operations under the provisions of Criterion No. 1 in § 3461.1 of this title.

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§ 3400.3-4 Trust protection lands.

The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3400.0-5(o). Regulations governing those deposits are found in 25 CFR Chapter I.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

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§ 3400.4 Federal/state government cooperation.

(a) In order to implement the requirements of law for Federal-state cooperation in the management of Federal lands, a Department-state regional coal team shall be established for each coal production region defined pursuant to § 3400.5. The team shall consist of a Bureau of Land Management field representative for each state in the region, who will be the Bureau of Land Management State Director, or, in his absence, his designated representative; the Governor of each state included in the region or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairperson of the team. If the region is a multi-state region under the jurisdiction of only one Bureau of Land Management State Office, each State Director shall designate a Bureau of Land Management representative for each state.

(b) Each regional coal team shall guide all phases of the coal activity planning process described in §§ 3420.3 through 3420.3-4 of this title which relate to competitive leasing in the region.

(c) The regional coal team shall also serve as the forum for Department/state consultation and cooperation in all other major Department coal management program decisions in the region, including preference right lease applications, public body and small business setaside leasing, emergency leasing and exchanges.

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3-4(g) shall be accepted except:

(1) In the case of an overriding national interest; or

(2) In the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4-3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

(e) Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. Participation may be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct surface management responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations, the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

(f) If a state declines to participate under this section in the coal-related activities of the Department:

(1) The Department may take action authorized in Group 3400 of this title in a coal production region wholly within such a state without forming a regional coal team, and

(2) The Department may form a regional coal team without a representative of the Governor of such a state in any multi-state coal production region.

(g) The regional coal team will function under the public participation procedures at §§ 1784.4-2, 1784.4-3, and 1784.5 of this chapter.

[44 FR 42609, July 19, 1979; 44 FR 56339, Oct. 1, 1979, as amended at 47 FR 33134, 33135, July 30, 1982; 51 FR 18887, May 23, 1986; 64 FR 52242, Sept. 28, 1999]

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§ 3400.5 Coal production regions.

The Bureau of Land Management shall establish by publication in the FEDERAL REGISTER coal production regions. A coal production region may be changed or its boundaries altered by publication of a notice of change in the FEDERAL REGISTER. Coal production regions shall be used for establishing regional leasing levels under § 3420.2 of this title. Coal production regions shall be used to establish areas in which leasing shall be conducted under § 3420.3 of this title and for other purposes of the coal management program.

[47 FR 33135, July 30, 1982]

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§ 3400.6 Minimum comment period.

Unless otherwise required in Group 3400 of this title, a minimum period of 30 days shall be allowed for public review and comment where such review is required for Federal coal management program activities under Group 3400 of this title.

[51 FR 18887, May 23, 1986]

PART 3410—EXPLORATION LICENSES

Contents

AUTHORITY: 30 U.S.C. 181 *et seq.*

SOURCE: 44 FR 42613, July 19, 1979, unless otherwise noted.

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Subpart 3410—Exploration Licenses

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§ 3410.0-1 Purpose.

This subpart provides for the issuance of licenses to explore for coal deposits subject to disposal under Group 3400.

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§ 3410.0-2 Objective.

The objective of this subpart is to allow private parties singularly or jointly to explore coal deposits to obtain geological, environmental, and other pertinent data concerning the coal deposits.

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§ 3410.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(b)).

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§ 3410.1 Exploration licenses: Generally.

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§ 3410.1-1 Lands subject to exploration licenses.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary that are subject to leasing, § 3400.2;

(2) Lands administered by the Secretary of Agriculture through the Forest Service or other agency that are subject to leasing, § 3400.2;

(3) Lands which have been conveyed by the United States subject to a reservation to the United States of the mineral or coal deposits, to the extent that those deposits are subject to leasing under § 3400.2; and

(4) Acquired lands set apart for military or naval purposes.

(b) No exploration license shall be issued for lands included in an existing coal lease.

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§ 3410.1-2 When an exploration license is required.

(a) No person may conduct exploration activities for commercial purposes, including sale of data acquired during exploration, on lands subject to this subpart without an exploration license.

(b) An exploration license shall not be required for casual use.

(c) Exploration activities conducted without an exploration license in violation of this section shall constitute a trespass, and shall be subject to the provisions of 43 CFR 9239.5-3(f).

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982]

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§ 3410.2 Prelicensing procedures.

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§ 3410.2-1 Application for an exploration license.

(a) Exploration license applications shall be submitted at the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (43 CFR subpart 1821). The applications shall be subject to the following requirements:

(1) No specified form of application is required.

(2) An area in a public land survey state for which an application is filed shall be described by legal description or, if on unsurveyed lands, by metes and bounds, in accordance with § 3471.1-1(d)(1) of this title. An application for an exploration license on acquired lands shall describe the area according to the description in the deed or document by which the United States acquired title in accordance with § 3471.1-1(d)(2) of this title.

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of § 3482.1(a) of this title.

(4) Each application and its supporting documents shall be filed with a nonrefundable filing fee (43 CFR 3473.2).

(5) Exploration license applications shall normally cover no more than 25,000 acres in a reasonably compact area and entirely within one state. An application for an exploration license covering more than 25,000 acres must include a justification for an exception to the normal acreage limitation.

(b) Nothing in this subpart shall preclude the authorized officer from issuing a call for expressions of leasing interest in an area containing exploration licenses or applications for exploration licenses.

(c) Applicants for exploration licenses shall be required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis.

(1) Immediately upon the filing of an application for an exploration license the applicant shall publish a “Notice of Invitation,” approved by the authorized officer, once every week for 2 consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice shall contain an invitation to the public to participate in the exploration under the license and shall contain the location of the Bureau of Land Management office in which the application shall be available for inspection. Copies of the Notice of Invitation shall be filed with the authorized officer at the time of publication by the applicant, for posting in the proper Bureau of Land Management Office and for Bureau of Land Management's publication of the Notice of Invitation in the FEDERAL REGISTER .

(2) Any person who seeks to participate in the exploration program contained in the application shall notify the authorized officer and the applicant in writing within 30 days after the publication in the FEDERAL REGISTER. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of persons seeking to participate, and to avoid the duplication of exploration activities in the same area, or may notify the person seeking to participate that the person should file a separate application for an exploration license.

(d) An application to conduct exploration which could have been conducted as a part of exploration under an existing or recent coal exploration license may be rejected.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 50 FR 8626, Mar. 4, 1985]

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§ 3410.2-2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer shall prepare an environmental assessment or environmental impact statement, if necessary, of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. No exploration license shall be issued if the exploration would:

(1) Result in disturbance that would cause significant and lasting degradation to the lands or injury to improvements, or in any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quantity, quality or hydrologic conditions of the coal deposits; or

(2) Jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat. No exploration license shall be issued until after compliance with sections 105 and 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) with respect to any cultural resources which might be affected by any activity under the exploration license.

(b) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the lands disturbed by the exploration.

[47 FR 33135, July 30, 1982, as amended at 50 FR 8626, Mar. 4, 1985]

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§ 3410.2-3 Surface management agency.

The authorized officer may issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only in accordance with those conditions prescribed by the surface management agency concerning the use and protection of the nonmineral interests in those lands.

[44 FR 42613, July 19, 1979. Redesignated at 47 FR 33135, July 30, 1982]

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§ 3410.3 Exploration licenses.

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§ 3410.3-1 Issuance and termination of an exploration license.

(a) The authorized officer has the discretion to issue an exploration license or to reject the application therefor under this subpart.

(b) An exploration license shall become effective on the date specified by the authorized officer as the date when exploration activities may begin. An exploration license shall not be valid for more than two years from its effective date.

(c) The approved exploration plan shall be attached and made a part of each exploration license.

(d) Subject to the continued obligation of the licensee and the surety company to comply with the terms and conditions of the exploration license, the exploration plan, and the regulations, a licensee may relinquish an exploration license for all or any portion of the lands covered by it. A relinquishment shall be filed in the Bureau of Land Management State Office in which the original application was filed. See 43 CFR subpart 1821.

(e) An exploration license may be cancelled by the authorized officer for noncompliance with its terms and conditions, the exploration plan, or the regulations, after the authorized officer has notified the licensee of the violation(s) in writing and the licensee has failed to correct the violation(s) within the period prescribed in the notice.

(f) Should a licensee request a modification to the exploration plan, the authorized officer may approve the modification if geologic or other conditions warrant.

(g) When unforeseen conditions that could result in substantial disturbance to the natural land surface or damage to the environment or improvements are encountered, or when geologic or other physical conditions warrant a modification in the approved exploration plan:

(1) The authorized officer may adjust the terms and conditions of the exploration license, or

(2) The authorized officer may direct adjustment in or approve modification of the exploration plan. If the licensee does not concur in the adjustment of the terms and conditions of the exploration license and exploration plan, he/she may, under 43 CFR part 4, appeal the decision modifying the license, or he/she may relinquish the exploration license.

(h) Exploration licenses shall not be extended. Exploration operations may not be conducted after the exploration license has expired. The licensee may apply for a new exploration license as described in this section. A new exploration license may be issued simultaneously with the termination of the existing exploration license.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985]

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§ 3410.3-2 Limitations on exploration licenses.

The issuance of exploration licenses for an area shall not preclude the issuance of a Federal coal lease under applicable regulations for that area. If such a lease is issued for lands included in an exploration license, the authorized officer shall cancel the exploration license on the effective date of the lease for those lands which are common to both.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982]

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§ 3410.3-3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations of the Bureau of Land Management (43 CFR part 3480). Copies of the operating regulations may be obtained from the authorized officer. Authorized representatives of the Secretary and, where appropriate the surface management agency shall be permitted to inspect the premises and operations. The licensee shall allow the free ingress and egress of Government officers and other persons using the land under authority of the United States.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 50 FR 8626, Mar. 4, 1985]

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§ 3410.3-4 Bonds.

(a) Bonding provisions in subpart 3474 of this chapter apply to this subpart.

(b) Prior to issuing an exploration license, the authorized officer shall ensure that the amount of the bond to be furnished is sufficient:

(1) To assure compliance with the terms and conditions of the exploration license and exploration plan; and

(2) In the absence of an agreement between the exploration licensee and the surface owner so providing, to assure compensation for damages to surface improvements made by surface owners where an exploration license embraces such lands. In no event shall the amount of such bond be less than $5,000.

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan and the regulations, or upon discontinuance of exploration operations and completion of needed reclamation to the satisfaction of the authorized officer, and where appropriate, the surface management agency, the authorized officer shall terminate the period of liability of the bond.

(d) Where the surface of the land being explored is privately owned, the authorized officer shall have the authority to terminate or adjust the period of liability and/or the amount of liability under the bond. The authorized officer shall provide, 30 days prior to the effective date of termination of the period of liability under the bond, a notice of termination to enable the surface owner to inspect the property and notify the authorized officer, in writing, of any deficiencies in reclamation. Should the licensee and any surface owner be unable to agree on the adequacy of the reclamation, the authorized officer shall make the final determination.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 48 FR 37655, Aug. 19, 1983; 50 FR 8626, Mar. 4, 1985]

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§ 3410.4 Collection and submission of data.

(a) The authorized officer may require the applicant to collect ground and surface water data that are available to the licensee in the conduct of the approved exploration plan.

(b) The licensee shall furnish the authorized officer copies of all data (including, but not limited to, geological, geophysical and core drilling analyses) obtained during exploration in a form requested by the authorized officer. All data shall be considered confidential and not made

public until the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (43 CFR 2.20 and 3481.3)

[44 FR 42613, July 19, 1979, as amended at 47 FR 33136, July 30, 1982; 50 FR 8626, Mar. 4, 1985]

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§ 3410.5 Use of surface.

(a) Operations under these regulations shall not unreasonably interfere with or endanger operations authorized under any other Act or regulation.

(b) The licensee shall comply with all applicable Federal, state and local laws and regulations, including the regulations.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33136, July 30, 1982]

PART 3420—COMPETITIVE LEASING

Contents

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-531 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Small Business Act of 1953, as amended (15 U.S.C. 631 *et seq.*).

SOURCE: 44 FR 42615, July 19, 1979, unless otherwise noted.

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Subpart 3420—Competitive Leasing

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§ 3420.0-1 Purpose.

This subpart sets forth how the Department will conduct competitive leasing of rights to extract Federal coal.

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§ 3420.0-2 Objectives.

The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental assessment or environmental impact statement processes; to promote the timely and orderly development of publicly owned coal resources; to ensure that coal deposits are leased at their fair market value; and to ensure that coal deposits are developed in consultation, cooperation and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

[47 FR 33136, July 30, 1982]

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§ 3420.0-3 Authority.

(a) The regulations in this part are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) The regulations in this part implement: (1) Primarily section 2(a) of the Mineral Leasing Act of 1920, as amended by sections 2 and 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); and (2) the Small Business Act of 1953, as amended (15 U.S.C. 631 *et seq.*).

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§ 3420.1 Procedures.

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§ 3420.1-1 Lands subject to evaluation for leasing.

All lands subject to coal leasing under the mineral leasing laws are subject to evaluation under this subpart (43 CFR 3400.2).

[44 FR 42615, July 19, 1979. Redesignated at 47 FR 33136, July 30, 1982]

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§ 3420.1-2 Call for coal resource and other resource information.

(a) Prior to or as part of the initiation or update of a land use plan or land use analysis, a Call for Coal and Other Resource Information shall be made to formally solicit indications of interest and information on coal resource development potential and on other resources which may be affected by coal development for lands in the planning unit. Industry, State and local governments and the general public may submit information on lands that should be considered for coal leasing, including statements describing why the lands should be considered for leasing.

(b) Proprietary data marked as confidential may be submitted in response to the Call for Coal and Other Resource Information, however, all such proprietary data shall be submitted to the authorized officer only. Data marked as confidential shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(c) The Call for Coal and Other Resource Information may be combined with the notice of intent to conduct land use planning published in accordance with § 1601.3(g) of this title or with the issue identification process in accordance with part 1600 of this title. If the agency conducting land use planning is other than the Bureau of Land Management, that agency may combine the Call for Coal and Other Resource Information with its land use planning process at the appropriate step.

[47 FR 33136, July 30, 1982, as amended at 50 FR 8626, Mar. 4, 1985; 51 FR 18888, May 23, 1986]

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§ 3420.1-3 Special leasing opportunities.

(a) The Secretary shall, under the procedures established in this subpart, including § 3420.3 of this title, reserve and offer a reasonable number of lease tracts through competitive lease sales open only to a restricted class of potential bidders. Except for the limitation on bidding contained in paragraph (b) of this section, all requirements in this subpart apply equally to special leasing opportunities, including the requirement that coal be leased at its fair market value.

(b) Special leasing opportunities shall be provided for two classes of potential lessees:

(1) *Public bodies.* (i) Only public bodies with a definite plan for producing energy for their own use or for their members or customers shall bid for leases designated as special leasing opportunities for public bodies. To qualify as a definite plan, a plan must clearly state the intended use of the coal and have been approved by the governing board of the public body submitting the plan. In the event an electric generating station which will produce energy for the public body is either jointly owned with or participated in by others, or both, the definite plan shall assure that the public body's proportionate part of the energy produced is utilized pursuant to this paragraph.

(ii) Each public body shall submit the information specified in § 3472.2-5(a) (1) and (2) of this title as part of its expression of leasing interest or upon submission of a bid if no expression of leasing interest is made. The information specified in § 3472.2-5(a) (3) and (4) of this title shall be submitted within 60 days after submission of an expression of leasing interest or lease bid if no expression of leasing interest is made.

(iii) The Secretary may designate, during the process of preparing a regional lease sale schedule, certain coal lease tracts for special leasing opportunities for public bodies only if a public body has submitted an expression of leasing interest under § 3420.3-2, requesting that the procedures of this section apply.

(iv) Leases issued under this section to public bodies may be assigned only to other public bodies, or to a person who will mine the coal on behalf of and for the use of the public body, or to a person for the limited purpose of creating a security interest in favor of a lender who agrees to be obligated to mine the coal on behalf of the public body.

(2) *Small businesses.* (i) When necessary to comply with the requirements of the Small Business Act, the Secretary shall designate a reasonable number of tracts for special leasing opportunities for businesses qualifying under 13 CFR part 121.

(ii) Leases issued under this section may be assigned only to other small businesses qualifying under 13 CFR part 121.

(c) Potential lessees qualifying for special leasing opportunities may participate in competitive lease sales not designated as special leasing opportunities and shall not be required to submit the evidence and information required specifically for a special leasing opportunity to participate.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33136, July 30, 1982]

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§ 3420.1-4 General requirements for land use planning.

(a) The Secretary may not hold a lease sale under this part unless the lands containing the coal deposits are included in a comprehensive land use plan or land use analysis. The land use plan or land use analysis will be conducted with public notice and opportunity for participation at the points specified in § 1610.2(f) of this title. The sale must be compatible with, and subject to, any relevant stipulations, guidelines, and standards set out in that plan or analysis.

(b)(1) The Bureau of Land Management shall prepare comprehensive land use plans and land use analyses for lands it administers in conformance with 43 CFR part 1600.

(2) The Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall prepare comprehensive land use plans or land use analyses for lands it administers.

(3) The Secretary may lease in any area where it is found either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan upon completion of a land use analysis in accordance with this section and 43 CFR part 1600.

(c) In an area of Federal lands not covered by a completed comprehensive land use plan or scheduled for comprehensive land use planning, a member of the public may request the appropriate Bureau of Land Management State Office to prepare a land use analysis for coal related uses of the land as provided for in this group.

(d) A comprehensive land use plan or land use analysis shall contain an estimate of the amount of coal recoverable by either surface or underground mining operations or both.

(e) The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing which shall be identified by the screening procedures listed below:

(1) Only those areas that have development potential may be identified as acceptable for further consideration for leasing. The Bureau of Land Management shall estimate coal development potential for the surface management agency. Coal companies, State and local governments and the general public are encouraged to submit information to the Bureau of Land Management at any time in connection with such development potential determinations. Coal companies, State and local governments and members of the general public may also submit nonconfidential coal geology and economic data during the inventory phase of planning to the surface management agency conducting the land use planning. Where such information is determined to indicate development potential for an area, the area may be included in the land use planning for evaluation for coal leasing.

(2) The Bureau of Land Management or the surface managing agency conducting the land use planning shall, using the unsuitability criteria and procedures set out in subpart 3461 of this title, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of mining. The unsuitability assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique and that are not included in the unsuitability criteria discussed in paragraph (e) of this section. Such values and uses include, but are not limited to, those identified in section 522(a)(3) of the Surface Mining Reclamation and Control Act of 1977 and as defined in 30 CFR 762.5. In making these multiple use decisions, the Bureau of Land Management or the surface management agency conducting the land use planning shall place particular emphasis on protecting the following: Air and water quality; wetlands, riparian areas and sole-source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National System of Trails, and the National Wild and Scenic Rivers System.

(4)(i) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg) (1) and (2) of § 3400.0-5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(ii) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing level.

(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(A) The number of surface owners who have expressed their preference against mining by other than underground techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; and

(B) The land use plan is amended accordingly.

(f) In its review of cumulative impacts of coal development, the regional coal team shall consider any threshold analysis performed during land-use planning as required by § 1610.4-4 of this title and shall apply this analysis, where appropriate, to the region as a whole.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33136, July 30, 1982; 50 FR 8626, Mar. 4, 1985; 51 FR 18888, May 23, 1986; 52 FR 46472, Dec. 8, 1987; 64 FR 52242, Sept. 28, 1999]

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§ 3420.1-5 Hearing requirements.

After public notice, the Bureau of Land Management or other surface management agency shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under part 1600 of this title of this chapter shall fulfill this requirement.

[47 FR 33137, July 30, 1982]

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§ 3420.1-6 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, or where the Bureau of Land Management manages lands on which coal development may impact land units of other Federal agencies, the Bureau of Land Management shall consult with the other agency to jointly determine the acceptability for further consideration for leasing of the potentially impacted lands the other agency administers or lands managed by the Bureau of Land Management that may impact lands of another agency.

[52 FR 46473, Dec. 8, 1987]

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§ 3420.1-7 Consultation with states and Indian tribes.

Before adopting a comprehensive land use plan or land use analysis that makes an assessment of lands acceptable for further consideration for leasing, the Bureau of Land Management or other surface management agency shall consult with the state Governor and the state agency charged with the responsibility for maintaining the state's unsuitability program (43 CFR 3461.4-1). Where a tribal government administers areas within or near the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, the Bureau shall consult with the tribal government.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33137, July 30, 1982]

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§ 3420.1-8 Identification of lands as acceptable for further consideration.

(a) Identification of lands as acceptable for further consideration for leasing will be made in the adoption of a comprehensive land use plan or land use analysis. Any lands identified as acceptable may be further considered for leasing under § 3420.3 of this title.

(b) Activity planning shall begin with a regional coal team meeting to review market analyses and land-use planning summaries. The market analyses and land-use planning summaries shall be avaiable at least 45 days prior to such meeting.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33137, July 30, 1982; 51 FR 18888, May 23, 1986]

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§ 3420.2 Regional leasing levels.

This section sets out the process to be followed in establishing regional leasing levels. Regional leasing levels shall be established by the Secretary. The Secretary shall particularly rely upon the advice and assistance of affected State Governors in ensuring that leasing levels have properly considered social, environmental and economic impacts and constraints.

(a) The regional coal teams shall be the forum through which initial leasing level recommendations are transmitted to the Secretary. Initial leasing level recommendations shall be developed as follows:

(1) The appropriate Bureau of Land Management State Director on the regional coal team, as designated by the regional coal team chairperson, shall prepare a broadly stated range of initial leasing levels for the region. This range of initial leasing levels must be based on information available to the State Director including: land use planning data; the results of the call for coal resource information held under § 3420.1-2 of this subpart; the results of the call for expressions of leasing interest held under § 3420.3-2 of this subpart; and other considerations. The State Director will consider comments received from the public in writing and at hearings, and input and advice from the Governors of the affected States regarding assumptions, data, and other factors pertinent to the region;

(2) This initial range of leasing levels shall be made available to the other members of the regional coal team for review and comment. This review shall be designed to ensure consideration of relevant social, environmental and economic factors of which the Secretary should be aware in setting leasing levels;

(3) Governors of affected States shall be requested by the regional coal team chairperson to provide comments and recommendations concerning the leasing levels through the Governor's representatives on the regional coal team. Governors may use any methodologies, systems or procedures available to determine their recommendations;

(4) The regional coal team chairperson shall call upon the team members to present their findings and recommendations on the initial leasing levels. The chairperson shall refer the members' recommendations to an appropriate Bureau State Director serving on the team. The State Director shall: (i) Ensure the recommendations are in an appropriate format; (ii) add any additional information from the Bureau of Land Management data sources which may be available and pertinent to leasing level decision-making; (iii) address any questions and clarify any issues raised by the members' recommendations; and (iv) outline any additional alternative leasing levels. The regional coal team shall consider the State Director's review and shall transmit to the Secretary alternative leasing levels and a preferred leasing level presented in ranges of tons to be offered for lease. The team also must transmit to the Secretary, without change, all comments and recommendations of the Governor and the public.

(5) The regional coal team transmittal to the Secretary shall be made through the Director, who may provide additional data and recommendations, but only as separate documentation.

(b) The Secretary, upon receipt of the regional coal team transmittal, shall initiate consultations, in writing, with the Secretary of Energy, the Attorney General and affected Indian tribes. The Secretary shall establish leasing levels by region for the purposes of approximating

the amount of coal to be offered through proposed lease sale schedules after consideration of potential policy conflicts or problems concerning, but not limited to:

(1) The Department's responsibility for the management, regulation and conservation of natural resources; and

(2) The capabilities of Federal lands and Federal coal resources to meet the proposed leasing levels, and the contributions State and privately owned coal lands can make.

(c) Leasing levels shall be based on the following factors:

(1) Advice from Governors of affected States as expressed through the regional coal team;

(2) The potential economic, social and environmental effects of coal leasing on the region, including recommendations from affected Indian tribes;

(3) Expressed industry interest in coal development in the region and indications of the demand for coal reserves;

(4) Expressed interests for special opportunity sales;

(5) Expected production from existing Federal coal leases and non-Federal coal holdings;

(6) The level of competition within the region and recommendations from the Department of Justice;

(7) U.S. coal production goals and projections of future demand for Federal coal;

(8) Consideration of national energy needs;

(9) Comments received from the public in writing and at public hearings; and

(10) Other pertinent factors.

(d) Prior to determining a final leasing level, the Secretary shall consult with the Governors of affected States to obtain final comments and recommendations. The Secretary shall then establish a final leasing level for the proposed coal lease sale.

(e) The levels shall be established for each coal production region where activity planning is conducted under the provisions of § 3420.3 of this subpart. The levels shall be developed separately for each region, but levels for 2 or more regions may be developed at the same time as the Secretary deems appropriate. Leasing levels may be stated in terms of a range of values.

(f) The leasing levels established for any given region shall become the basis for the proposed action for study in the regional coal lease sale environmental impact statement prepared pursuant to § 3420.3-4 of this subpart. The Secretary's final decision on which coal lease tracts, if any, within a region to offer for sale, and the schedule for the offering of such tracts shall be based on all information at the Secretary's disposal at the time of the decision.

[47 FR 33137, July 30, 1982, as amended at 48 FR 37655, Aug. 19, 1983; 50 FR 8626, Mar. 4, 1985; 64 FR 52242, Sept. 28, 1999]

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§ 3420.3 Activity planning: The leasing process.

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§ 3420.3-1 Area identification process.

(a) This section describes the process for identifying, ranking, analyzing, selecting, and scheduling lease tracts after land use planning has been completed. This process constitutes the "activity planning" aspect of the coal management program. Activity planning may occur where areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1-4 of this subpart.

(b) Split estate land otherwise acceptable for further consideration for leasing shall, upon verfication of a refusal to consent received from a qualified surface owner under § 3427.2 of this title, be deleted from further activity planning.

(c) Each regional coal team established under § 3400.4 of this title shall:

(1) Guide tract delineation and preparation of site specific analyses of delineated tracts;

(2) Rank delineated tracts, select tracts that meet the leasing level established by the Secretary, and identify all alternative tract combinations to be analyzed in the regional lease sale environmental impact statement;

(3) Guide the preparation of the regional lease sale environmental impact statement; and

(4) Recommend a regional coal lease sale schedule to the Director.

(d) Public notice and opportunity for participation in activity planning must be appropriate to the area and the people involved. The Bureau of Land Management will make available a calendar listing of the points in the planning process at which the public may participate, including:

(1) The regional coal team meeting to recommend initial leasing levels (see § 3420.2(a)(4));

(2) The regional coal team meeting for tract ranking (see § 3420.3-4(a));

(3) Publication of the regional coal lease sale environmental impact statement (see § 3420.3-4(c)); and

(4) The regional coal team meeting to recommend specific tracts for a lease sale and a lease sale schedule (see § 3420.3-4(g)).

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33138, July 30, 1982; 64 FR 52243, Sept. 28, 1999]

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§ 3420.3-2 Expressions of leasing interest.

(a) A call for expressions of leasing interest may be made after areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1-4 of this subpart.

(b) Each call for expressions of leasing interest shall be published as a notice in the FEDERAL REGISTER and in at least 1 newspaper of general circulation in each affected state.

(c) All information submitted under this subpart shall be available for public inspection and copying upon request. Data which are considered proprietary shall not be submitted as part of an expression of leasing interest.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33138, July 30, 1982]

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§ 3420.3-3 Preliminary tract delineation.

(a) Tracts may be delineated in any areas acceptable for further consideration for leasing whether or not expressions of leasing interest have been received for those areas.

(b) When public bodies have submitted expressions of leasing interest, tracts shall be delineated when and where technically feasible for public body special leasing opportunities in accordance with § 3420.1-3 of this subpart.

(c) In cooperation with the Small Business Administration, tracts may be delineated when and where technically feasible for small business special leasing opportunities in accordance with § 3420.1-3 of this title.

(d) Other tracts to be used in a lease or fee exchange (43 CFR subparts 3435 and 3436) may be delineated.

(e) A tract profile shall be formulated for each tract. The profile shall include:

(1) A summary of the information used in the delineation of the tract, and

(2) A site-specific environmental inventory and preliminary analysis.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33138, July 30, 1982]

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§ 3420.3-4 Regional tract ranking, selection, environmental analysis and scheduling.

(a)(1) Upon completion of tract delineation and preparation of the tract profiles, the regional coal team shall rank the tracts in classes of high, medium or low desirability for coal leasing. Three major categories of consideration shall be used in tract ranking: coal economics; impacts on the natural environment; and socioeconomic impacts. The subfactors the regional coal team will consider under each category are those the regional coal team determines are appropriate for that region. The regional coal team will make its determination after publishing notice in the FEDERAL REGISTER that the public has 30 days to comment on the subfactors. The regional coal team will then consider any comments it receives in determining the subfactors. BLM will publish the subfactors in the regional lease sale environmental impact statement required by this section.

Tracts may also be ranked for other coal management purposes, such as emergency leasing under subpart 3425 of this title or exchanges under subparts 3435 and 3436 of this title.

(2) The regional coal team may modify tract boundaries being ranked, if appropriate, to reflect additional information.

(3) In ranking tracts, the regional coal team shall solicit the recommendations of the Federal and State agencies having appropriate expertise, including the Geological Survey, the Fish and Wildlife Service and the Federal surface management agency, if other than the Bureau of Land Management.

(4) Where Federal leasing decisions are likely to have impacts on lands held in trust for an Indian tribe, the regional coal team shall solicit the recommendations of the tribe and the Bureau of Indian Affairs.

(5) A statement that descriptions of the tracts to be ranked are available shall be included with the notice announcing any regional coal team meeting at which those tracts shall be ranked. BLM will publish the notice no later than 45 days before the meeting. The notice will list potential topics for discussion. An opportunity for public comment on the tract rankings shall be provided during the regional coal team meeting.

(b)(1) Upon completion of tract ranking, the regional coal team shall select at least 1 combination of tracts that approximates the regional leasing level. One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental impact statement. The team shall also select tract combinations representing alternative leasing levels. The team may identify alternative combinations of tracts within a leasing level.

(2) The regional coal team may adjust the tract ranking and select tracts to reflect considerations including:

(i) The compatibility of coal quality, coal type and market needs;

(ii) Environmental and socioeconomic impacts;

(iii) The compatibility of reserve size and demand distribution for tracts;

(iv) Public opinion;

(v) Avoidance of future emergency lease situations; and

(vi) Special leasing opportunity requirements.

(c) After tract ranking and selection, a regional lease sale environmental impact statement on all tract combinations selected by the regional coal team for the various leasing levels and all other reasonable alternative leasing levels shall be prepared by the Bureau of Land Management in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal and noncoal development activities.

(d) The results of the ranking and selection process, including the tract rankings, the tract selected and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement required by paragraph (c) of this section. Detailed information on each of the tracts shall be available for inspection in the Bureau of Land Management State offices that have jurisdiction over lands within the coal production region (See 43 CFR subpart 1821). BLM will publish a notice in the FEDERAL REGISTER of the 60-day comment period and the public hearing on the draft environmental impact statement. BLM also will publish the notice at least once per week for two consecutive weeks in a newspaper of general circulation in the area of the sale.

(e) Public hearings shall be held in the region following the release of the draft regional lease sale environmental impact statement to announce and discuss the results of the ranking and selection process and the potential impacts, including proposed mitigation measures.

(f) When the comment period on the draft environmental impact statement closes, the regional coal team will analyze the comments and make any appropriate revisions in the tract ranking and selection. The final regional lease sale environmental impact statement will reflect such revisions and will include all comments received.

(g) When BLM completes and releases the final regional lease sale environmental impact statement, the regional coal team will meet and recommend specific tracts for lease sale and a lease sale schedule. The regional coal team will provide notice in the FEDERAL REGISTER of the date and location at least 45 days before its meeting. The chairperson shall submit the recommendations to the Director. Any disagreement as to the recommendation among the team shall be documented and submitted by the chairperson along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his/her decision, together with the recommendation of the team and any recommendations the Director may wish to make.

(h) The tract ranking, selection and scheduling process and the regional lease sale environmental impact statement shall be revised or repeated as needed. The Secretary may, in consultation with the Governor(s) of the affected State(s) and surface management agencies, initiate or postpone the process to respond to considerations such as major land use planning updates, new tract delineations or increases or decreases in the leasing levels.

[47 FR 33138, July 30, 1982; 47 FR 38131, Aug. 30, 1982, as amended at 48 FR 37655, Aug. 19, 1983; 51 FR 18888, May 23, 1986; 64 FR 52243, Sept. 28, 1999]

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§ 3420.4 Final consultations.

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§ 3420.4-1 Timing of consultation.

Following the release of the final regional lease sale environmental impact statement, and prior to adopting a regional lease sale schedule, the Secretary shall engage in formal consultation as specified in §§ 3420.4-2 through 3420.4-5 of this title.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

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§ 3420.4-2 Consultation with surface management agencies.

(a) The Secretary, for any proposed lease tract containing lands the surface of which is under the jurisdiction of any agency other than the Department, shall request that the agency: (1) Consent, if it has not already done so, to the issuance of the lease (43 CFR 3400.3-1), and (2) if it consents, prescribe the terms and conditions the Secretary will impose in any lease which the head of the agency requires for the use and protection of the nonmineral interests in those lands.

(b) The Secretary may prescribe additional terms and conditions that are consistent with the terms proposed by the surface management agency to protect the interest of the United States and to safeguard the public welfare.

[44 FR 42615, July 19, 1979. Redesignated at 47 FR 33139, July 30, 1982]

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§ 3420.4-3 Consultation with Governors.

(a) The Secretary shall consult the Governor of the state in which any tract proposed for sale is located. The Secretary shall give the Governor 30 days to comment before adopting a regional lease sale schedule or, for lease applications, before publishing a notice of sale for any tract within the State.

(b) When a tract proposed for lease sale within the boundaries of a National Forest would, if leased, be mined by surface mining methods, the Governor of the state in which the land to be leased is located shall be so notified by the Secretary. If the Governor fails to object to the lease sale proposal in 60 days, the Secretary may publish a notice of sale, including that tract. If, within the 60 day period, the Governor, in writing, objects to the lease sale proposal, the Secretary may not publish a notice of sale for that tract. Publication of the notice of sale shall be held in abeyance for 6 months from the date that the Governor objects. The Governor may, during this six-month period, submit a written statement of reasons why the tract should not be proposed for lease sale, and the Secretary shall, on the basis of this statement, reconsider the lease sale proposal.

(c) Before determining whether to conduct a lease sale, the Secretary shall seek the recommendation of the Governor of the State(s) in which the lands proposed to be offered for lease are located as to whether or not to lease such lands and what alternative actions are available and what special conditions could be added to the proposed lease(s) to mitigate impacts. The Secretary shall accept the recommendations of the Governor(s) if he determines that they provide for a reasonable balance between the national interest and the State's interests. The Secretary shall communicate to the Governor(s) in writing and publish in the FEDERAL REGISTER the reasons for his determination to accept or reject such Governor's recommendations.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982; 48 FR 37655, Aug. 19, 1983]

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§ 3420.4-4 Consultation with Indian tribes.

The Secretary shall consult with any Indian tribe which may be affected by the adoption of the proposed regional lease sale schedule. The Secretary shall give the tribe 30 days in which to comment prior to adopting a lease sale schedule.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

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§ 3420.4-5 Consultation with the Attorney General.

The Secretary shall consult with and give due consideration to the advice of the Attorney General before the adoption of the proposed regional lease sale schedule. The Secretary shall provide 30 days in which the Attorney General may advise the Secretary prior to adopting a lease schedule.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

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§ 3420.5 Adoption of final regional lease sale schedule.

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§ 3420.5-1 Announcement.

Following completion of the requirements of §§ 3420.3 and 3420.4 of this title, the Secretary shall announce the adoption of a final regional lease sale schedule. The announcement shall be published in the FEDERAL REGISTER and contain a legal description of each tract included in the lease sale schedule and the date when each tract has been tentatively scheduled for sale. Notice of this announcement shall be published in at least 1 newspaper of general distribution in each state within the region for which the regional lease sale schedule is adopted.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

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§ 3420.5-2 Revision.

(a) The Secretary may revise either the list of tracts included in the schedule or the timing of the lease sales in accordance with any alternatives which were considered in the regional lease sale environmental impact statement and during consultation under § 3420.4 of this title. BLM will publish a notice in the FEDERAL REGISTER and provide a 30-day comment period before it makes any revision increasing the number or frequency of sales, or the amount of coal offered. BLM will publish any revision in the FEDERAL REGISTER .

(b) Any regional lease sale schedule may be updated or replaced as a result of a new regional tract ranking, selection, and scheduling effort conducted in accordance with the provisions of § 3420.3-4 of this title.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33140, July 30, 1982; 64 FR 52243, Sept. 28, 1999]

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§ 3420.6 Reoffer of tracts not sold in previous regional lease sales.

Following the offering of tracts in accordance with the procedures outlined in §§ 3420.2, 3420.3, 3420.4 and 3420.5, any tracts not sold in accordance with the above listed provisions may be reoffered for sale by the Department provided a lease sale schedule has been reviewed by the regional coal team and, after consultation with the Governor, adopted by the Secretary. Provisions of subpart 3422 shall apply to these tracts.

[48 FR 37655, Aug. 19, 1983]

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Subpart 3422—Lease Sales

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§ 3422.1 Fair market value and maximum economic recovery.

(a) Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value (FMV) appraisal and the maximum economic recovery (MER) of the tract or tracts proposed to be offered and on factors that may affect these 2 determinations. BLM will publish the solicitation in the FEDERAL REGISTER and at least once per week for two consecutive weeks in a newspaper of general circulation in the area of the sale. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to the solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(b) The authorized officer shall prepare a written report containing information on the mining method evaluation, estimated coal reserves by bed, coal quality assessment, royalty and lease bond recommendations and an evaluation of the public comments on the FMV and MER.

(c)(1) The authorized officer shall not accept any bid that is less than the fair market value as determined by the Department.

(2) Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than $100 per acre or its equivalent in cents-per-ton.

[47 FR 33140, July 30, 1982, as amended at 50 FR 8626, Mar. 4, 1985; 51 FR 18888, May 23, 1986; 64 FR 52243, Sept. 28, 1999]

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§ 3422.2 Notice of sale and detailed statement.

(a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county or

equivalent political subdivision in which the tracts to be sold are situated. The newspaper notice shall be published not less than once a week for 3 consecutive weeks. BLM will post notice of the sale in BLM State Office where the coal lands are managed. BLM will also mail notice to any surface owner of lands noticed for sale and to any other person who has requested notice of sales in the area. The lease sale shall not be held until at least 30 days after such posting in the State Office.

(b) The notice shall:

(1) List the time and place of sale, the type of sale, bidding method, rental, and the description of the tract(s) being offered and the minimum bid(s) to be considered;

(2) Contain a description of the coal resources to be offered; and

(3) Contain information on where a detailed statement of the terms and conditions of the lease(s) which may result from the lease sale may be obtained.

(c) The detailed statement of the terms and conditions of the lease(s) offered and bidding instructions for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(3) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(4) Contain a notice that each bid shall be accompanied by the bidder's qualifications (See 43 CFR 3472.2-2);

(5) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney General for post-sale review (See 43 CFR 3422.3-4);

(6) If appropriate, contain (i) a copy of any written qualified surface owner consent, including purchase price, financial obligations and terms and conditions, filed and verified prior to the posting of the notice of lease sale in the appropriate Bureau of Land Management State office; or (ii) a listing of lands for which qualified surface owner consent is required prior to lease sale but has not yet been filed, along with a statement that any consent for those lands filed prior to the deadline for such filings shall be made a part of the official file and shall be available for inspection by the public;

(7) If appropriate, contain a notice that bidders shall file a statement that all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State office (43 CFR subpart 1821) in accordance with the provisions of subpart 3427 of this title;

(8) Contain a copy of the proposed lease, including all terms and special stipulations; and

(9) Contain any other information deemed appropriate by the authorized officer.

(d) Each successful bidder, if any, shall reimburse the United States for a proportionate share of the cost of publishing the notice of sale as a condition of lease issuance.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33140, July 30, 1982; 64 FR 52243, Sept. 28, 1999]

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§ 3422.3 Sale procedures.

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§ 3422.3-1 Bidding systems.

(a) The provisions of 10 CFR part 378 [1] are not applicable to this part.

[1] Redesignated as 30 CFR part 260 and removed at 48 FR 1182, Jan. 11, 1983.

(b) The Department may conduct lease sales using cash bonus—fixed royalty bidding systems or any other bidding system adopted through rulemaking procedures.

[47 FR 33140, July 30, 1982]

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§ 3422.3-2 Conduct of sale.

(a)(1) Sealed bids shall be received only until the hour on the date specified in the notice of competitive leasing; all sealed bids submitted after that hour shall be returned. The authorized officer shall read all sealed bids, and shall announce the highest bid.

(2) No decision to accept or reject the high bid will be made at the time of sale.

(b) A sale panel shall convene to determine: (1) If the high bid was properly submitted; (2) if it reflects the FMV of the tract; and (3) whether the bidder is qualified to hold the lease. The recommendations of the panel shall be in writing and sent to the authorized officer who shall make the final decision to accept a bid or reject all bids. The sale panel's recommendation and the authorized officer's written decision shall be entered in the case file for the offered tract. The successful bidder shall be notified in writing. The Department reserves the right to reject any and all bids regardless of the amount offered, and shall not accept any bid that is less than fair market value. The authorized officer shall notify any bidder whose bid has been rejected and include in such notice a statement of the reason for the rejection. The Department reserves the right to offer the lease to the next highest qualified bidder if the successful bidder fails to execute the lease, or is for any reason disqualified from receiving the lease.

(c) Each sealed bid shall be accompanied by a certified check, cashier's check, bank draft, money order, certificate of bidding rights, personal check or cash for one-fifth of the amount of the bonus, and a qualifications statement over the bidder's own signature with respect to citizenship and interests held, as prescribed in § 3472.2-2 of this title.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33140, July 30, 1982]

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§ 3422.3-3 Unsurveyed lands.

If the land is unsurveyed, the successful bidder shall not be given notice to comply with the requirements of § 3422.4 of this title for lease issuance until the land has been surveyed as provided in § 3471.1-2 of this title.

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§ 3422.3-4 Consultation with the Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the authorized officer shall require the successful bidder to submit on a form or in a format approved by the Attorney General information relating to the bidder's coal holdings to the authorized officer for transmittal to the Attorney General. Upon receipt of the information, the authorized officer shall notify the Attorney General of the proposed lease issuance, the name of the successful bidder and terms of the proposed lease sale and shall transmit the bidder's statement on coal holdings. A description of the information required by the Attorney General and the form or format for submission of the information may be obtained from the authorized officer.

(b) Where a successful bidder has previously submitted the currently required information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

(c) The authorized officer shall not issue a lease until 30 days after the Attorney General receives the notice and statement of the successful bidder's coal holdings, or the Attorney General notifies the Director that lease issuance would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. The Attorney General shall inform the successful bidders and simultaneously, the authorized officer, if the successful bidder's statement of coal holdings is incomplete or inadequate, and shall specify what information is required for the Attorney General to complete his review. The 30 day period shall stop running on the date of such notification and not resume running until the Attorney General receives the supplemental information.

(d) The authorized officer shall not issue the lease to the successful bidder, if, during the 30 day period, the Attorney General notifies the Director that the lease issuance would create or maintain a situation inconsistent with antitrust law, except after complying with paragraph (e)(2) of this section.

(e) If the Attorney General notifies the Director that a lease should not be issued, the authorized officer may:

(1) Reject all bids or many notify the Attorney General in accordance with paragraph (a) of this section that issuance of the proposed lease to the next qualified high bidder is under consideration; or

(2) Issue the lease if, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

(i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976;

(ii) Issuance of the lease is consistent with the public interest; and

(iii) There are no reasonable alternatives to the issuance of the lease consistent with the Federal Coal Leasing Amendments Act of 1976, the anti-trust laws, and the public interest.

(f) If the Attorney General does not reply in writing to the notification in paragraph (a) of this section within 30 days, the authorized officer may issue a lease without waiting for the advice of the Attorney General.

(g) Information submitted to the authorized officer to comply with this section shall be treated as confidential and proprietary data if marked “confidential” by the reporting company. Confidential information shall be submitted to the authorized officer in a sealed envelope and shall be transmitted in that form to the Attorney General.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33140, July 30, 1982]

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§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3-4(e)(2) of this title have been completed, the authorized officer shall send 4 copies of the lease form to the successful bidder. The successful bidder shall complete, sign and return these forms and shall: pay the balance of the bonus bid, if required; pay the first year's rental; pay the proportionate share of the cost of publishing the notice of sale; and file a lease bond. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions of § 3472.2-4 of this title shall apply.

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next 4 anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(d) If the successful bidder fails to comply with any requirement of paragraph (a) of this section or of § 3422.3-4 of this title, the deposit on the successful bid shall be forfeited to the United States.

(e) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the deposit submitted with the bid shall be refunded.

[47 FR 33141, July 30, 1982]

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Subpart 3425—Leasing on Application

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§ 3425.0-1 Purpose.

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§ 3425.0-2 Objective.

The objective of this subpart is to provide an application process through which the Department may consider holding lease sales apart from the competitive leasing process set out in §§ 3420.3 through 3420.5-2 of this title, where an emergency need for unleased coal deposits is demonstrated, or in areas outside coal production regions or outside eastern activity planning areas.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982]

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§ 3425.1 Application for lease.

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§ 3425.1-1 Where filed.

Application for a lease covering lands subject to leasing (43 CFR 3400.2) shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands or minerals involved (43 CFR subpart 1821).

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§ 3425.1-2 Contents of application.

No specific form of application is required. Three copies of the application, including preliminary and other data required by this subpart shall be filed. The lands applied for shall be described in accordance with subpart 3471 of this title. The application must be accompanied by the filing fee (43 CFR 3473.2).

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§ 3425.1-3 Qualifications of the applicant.

Any applicant for a lease shall meet the qualifications required of a lessee as specified in subpart 3472 of this title.

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§ 3425.1-4 Emergency leasing.

(a) An emergency lease sale may be held in response to an application under this subpart if the applicant shows:

(1) That the coal reserves applied for shall be mined as part of a mining operation that is producing coal on the date of the application, and either:

(i) The Federal coal is needed within 3 years (A) to maintain an existing mining operation at its current average annual level of production on the date of application or (B) to supply coal for contracts signed prior to July 19, 1979, as substantiated by a complete copy of the supply or delivery contract, or both; or

(ii) If the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years; and

(2) That the need for the coal deposits shall have resulted from circumstances that were either beyond the control of the applicant or could not have been reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.3 of this title.

(b) The extent of any lease issued under this section shall not exceed 8 years of recoverable reserves at the rate of production under which the applicant qualified in paragraph (a)(1) of this section. If the applicant qualifies under both paragraphs (a)(1) (A) and (B) of this section, the higher rate applies.

(c) The authorized officer shall provide the Governor of the affected State(s) a notice of an emergency lease application when it is filed with the Bureau of Land Management.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982; 48 FR 37655, Aug. 19, 1983]

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§ 3425.1-5 Leasing outside coal production regions.

A lease sale may be held in response to an application under this subpart if the application covers coal deposits which are outside coal production regions identified under § 3400.5 of this title.

[47 FR 33141, July 30, 1982]

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§ 3425.1-6 Hardship leases.

The Secretary may issue a lease under this subpart based on any application listed by serial number in the modified court order in *NRDC* v. *Hughes,* 454 F. Supp. 148 (D.D.C. 1978).

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§ 3425.1-7 Preliminary data.

(a) Any application for a lease shall contain preliminary data to assist the authorized officer in conducting an environmental analysis as described in § 3425.3 of this title.

(b) Such preliminary data shall include:

(1) A map, or maps, showing the topography, physical features and natural drainage patterns, existing roads, vehicular trails, and utility systems; the location of any proposed

exploration operations, including seismic lines and drill holes; to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources that may be used in the proposed operations and facilities.

(2) A narrative statement, including:

(i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used;

(ii) The method of mining anticipated, including the best estimate of the mining sequence and production rate to be followed;

(iii) The relationship between the mining operations anticipated on the lands applied for and existing or planned mining operations, or support facilities on adjacent Federal or non-Federal lands;

(iv) A brief description, including maps or aerial photographs, as appropriate, of: The existing land use or uses within and adjacent to the lands applied for; known geologic, visual, cultural, paleontological or archaeological features; wetlands and floodplains; and known habitat of fish and wildlife—particularly threatened and endangered species—any of which may be affected by the proposed or anticipated exploration or mining operations and related facilities;

(v) A brief description of the proposed measures to be taken to control or prevent fire and to mitigate or prevent soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, adverse impacts to the social and infrastructure systems of local communities, and hazards to public health and safety; reclaim the surface; and meet other applicable laws and regulations. The applicant may submit other pertinent information that the applicant wishes to have considered by the authorized officer;

(vi) A statement which describes the intended use of the coal covered by the emergency application; and

(vii) Any other information which will show that the application meets the requirements of this subpart.

(c) The applicant may engage in casual use of the land in the application, but shall not undertake any exploration without prior authorization by exploration license, or undertake any mining operations until lease issuance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during an environmental assessment may request additional information from the applicant. Where the surface of the land is held by a qualified surface owner (§ 3400.0-5) and the mining method to be used is other than underground mining techniques, the authorized officer shall obtain documents necessary to show ownership of the surface. The applicant shall submit evidence of written consent from any qualified surface owner(s). (In accordance with subpart 3427 of this title).

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982]

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§ 3425.1-8 Rejection of applications.

(a) An application for a lease shall be rejected in total or in part if the authorized officer determines that: (1) The application is not consistent with the applicable regulations; (2) issuance of the lease would compromise the regional leasing process described in § 3420.3 of this title; or (3) leasing of the lands covered by the application, for environmental or other sufficient reasons, would be contrary to the public interest.

(b) Any application subject to rejection under paragraph (a) of this section shall not be rejected until the applicant is given written notice of the opportunity to provide requested missing information and fails to do so within the time specified in the decision issued for that purpose.

(c) The authorized officer shall transmit reasonable notice of the rejection of an emergency lease application to the Governor of the affected State(s).

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982; 48 FR 37655, Aug. 19, 1983]

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§ 3425.1-9 Modification of application area.

The authorized officer may add or delete lands from an area covered by an application for any reason he/she determines to be in the public interest. If an environmental assessment of the modification is required, BLM will solicit and consider public comments on the modified application.

[47 FR 33141, July 30, 1982, as amended at 64 FR 52243, Sept. 28, 1999]

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§ 3425.2 Land use plans.

No lease shall be offered for sale under this subpart unless the lands have been included in a comprehensive land use plan or a land use analysis, as required in § 3420.1-4 of this title. The decision to hold a lease sale shall be consistent with the appropriate comprehensive land use plan or land use analysis.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982]

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§ 3425.3 Environmental analysis.

(a) Before a lease sale may be held under this subpart, the authorized officer shall prepare an environmental assessment or environmental impact statement of the proposed lease area in accordance with 40 CFR parts 1500 through 1508. BLM will publish a notice in the FEDERAL REGISTER, and at least once per week for two consecutive weeks in a newspaper of general circulation in the area of the sale, announcing the availability of the environmental assessment or draft environmental impact statement and the hearing required by § 3425.4(a)(1). BLM also will mail to the surface owner a notice of any lands to be offered for sale and to any person who has requested notice of sales in the area.

(b) For lease applications involving lands in the National Forest System, the authorized officer shall submit the lease application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment and for the attachment of appropriate lease stipulations, and for the making of any other findings prerequisite to lease issuance. (43 CFR 3400.3, 3461.1(a))

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982; 64 FR 52243, Sept. 28, 1999]

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§ 3425.4 Consultation and sale procedures.

(a)(1) Prior to holding any lease sale in response to any application under this subpart, a public hearing shall be held on the environmental assessment or environmental impact statement, the proposed sale and the fair market value and maximum economic recovery on the proposed lease tract.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in §§ 3420.4-2 through 3420.4-5 of this title.

(b) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under this subpart.

[47 FR 33142, July 30, 1982]

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§ 3425.5 Lease terms.

The terms of a lease issued under this subpart shall be consistent with the terms established for all competitive coal leases (43 CFR part 3470).

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Subpart 3427—Split Estate Leasing

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§ 3427.0-1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0-5) and the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands.

[47 FR 33142, July 30, 1982]

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§ 3427.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M-36909, 86 I.D. 28 (1979).

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§ 3427.0-7 Scope.

The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:

(a) To preference right lease applications; and

(b) If the split estate coal is to be mined by underground mining techniques (43 CFR 3500.0-5).

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§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0-5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0-5(gg)) allowing entry and commencement of surface mining operations.

[47 FR 33142, July 30, 1982]

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§ 3427.2 Procedures.

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR subpart 1821). For lands offered for lease sale pursuant to subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the FEDERAL REGISTER. For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

(2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning.

(b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing,

and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d)(2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:

(i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and

(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0-5(gg) of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(e) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.

(f) The applicable conditions of paragraphs (d) and (e) of this section shall be met prior to the lease sale for lands to which the consents apply.

(g) The authorized officer shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(h) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the sale for the tract(s). Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR subpart 1821).

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be

notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if the authorized officer is unable to independently determine whether or not the surface owner is qualified, the authorized officer shall presume that the surface owner is unqualified. The authorized officer shall notify the surface owner in writing of this determination and shall provide the surface owner an opportunity to appeal the determination.

(k) Any surface owner determined to be unqualified by decision of the field official of the surface management agency shall have 30 days from the date of receipt of such decision in which he/she may appeal the decision to the appropriate State Director of the Bureau of Land Management. The surface owner shall have the right to appeal the State Director's decision to the Director, Bureau of Land Management, within 30 days of receipt of that decision. Both appeals under this paragraph shall be in writing. As an exception to the provisions of § 3000.4 of this title, the decision of the Director shall be the final administrative action of the Department of the Interior.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33142, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

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§ 3427.3 Validation of information.

Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.

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§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 3, 1977, shall not be required to meet the transferability of § 3427.2(d)(1) of this title.

[47 FR 33142, July 30, 1982]

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§ 3427.5 Unqualified surface owners.

(a) Lease tracts involving surface owners who are not qualified (see § 3400.0-5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see section 9 of the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).

(b) The provisions of §§ 3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale

of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.

[47 FR 33142, July 30, 1982]

PART 3430—NONCOMPETITIVE LEASES

Contents

AUTHORITY: 30 U.S.C. 181 *et seq.* ; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 *et seq.;* and 43 U.S.C. 1701 *et seq.*

SOURCE: 44 FR 42628, July 19, 1979, unless otherwise noted.

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Subpart 3430—Preference Right Leases

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§ 3430.0-1 Purpose.

These regulations set forth procedures for processing noncompetitive (preference right) coal lease applications on Federal lands.

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§ 3430.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)).

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982]

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§ 3430.0-7 Scope.

Section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands. Therefore, these regulations apply only to preference right lease applications based on

prospecting permits issued prior to August 4, 1976. The surface owner consent provisions of section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) do not apply to preference right lease applications.

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§ 3430.1 Preference right leases.

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§ 3430.1-1 Showing required for entitlement to a lease.

An applicant for a preference right lease shall be entitled to a noncompetitive coal lease if the applicant can demonstrate that he discovered commercial quantities of coal on the prospecting permit lands within the term of the prospecting permit, all other requirements having been met.

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§ 3430.1-2 Commercial quantities defined.

For the purpose of § 3430.1-1 of this title, commercial quantities is defined as follows:

(a) The coal deposit discovered under the prospecting permit shall be of such character and quantity that a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

(b) The applicant shall present sufficient evidence to show that there is a reasonable expectation that revenues from the sale of the coal shall exceed the cost of developing the mine and extracting, removing, transporting, and marketing the coal. The costs of development shall include the estimated cost of exercising environmental protection measures and suitably reclaiming the lands and complying with all applicable Federal and state laws and regulations.

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§ 3430.2 Application for lease.

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§ 3430.2-1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of:

(a) Information on the quantity and quality of the coal resources discovered within the boundaries of the prospecting permit area, including an average proximate analysis, sulfur content and BTU content of the coal, and all supporting geological and geophysical data used to develop the required information.

(1) Coal quantity shall be indicated by structural maps of the tops of all beds to be mined, isopachous maps of beds to be mined and interburden; and, for beds to be mined by surface mining methods, isopachous maps of the overburden. These maps shall show the location of test holes and outcrops. An estimate of the measured and indicated reserves for each bed to be mined shall be included.

(2) Coal quality data shall include, at a minimum, an average proximate analysis, sulfur content, and BTU content of the coal in each bed to be mined. Also, all supporting geological and geophysical data used to develop the required information shall be submitted.

(b) Topographic maps as available from state or Federal sources showing physical features, drainage patterns, roads and vehicle trails, utility systems, and water sources. The location of proposed development and mining operations facilities shall be identified on the maps. These maps shall include the approximate locations and extent of tailings and overburden storage areas; location and size of pit areas; and the location of water sources or other resources that may be used in the proposed operation and facilities incidental to that use.

(c) A narrative statement that includes:

(1) The anticipated scope of operations, the schedule of operations, and the types of equipment to be used;

(2) The mining method to be used and an estimate of the expected mining sequence and production rate; and

(3) The relationship, if any, between operations planned on the land applied for and existing or planned operations and facilities on adjacent lands.

(d) The authorized officer may request from the applicant, or the applicant may submit, any other information necessary to conduct an environmental analysis of the proposed mining operation, formulate mitigating measures and lease terms and determine commercial quantities.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982]

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§ 3430.2-2 Additional time.

(a) If the applicant has timely submitted some, but not all, of the information required by § 3430.2-1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested information within 60 days of the date of the request. The authorized officer may grant one 60-day extension if the applicant files a written request for an extension within the first 60-day period.

[44 FR 42628, July 19, 1979. Redesignated and amended at 47 FR 33143, July 30, 1982]

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§ 3430.3 Planning and environment.

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§ 3430.3-1 Land use planning.

(a) As a matter of policy, the Department shall complete the processing of all preference right lease applications.

(b) Preference right lease applications shall be processed in the cycle of on-going comprehensive land use plans unless the authorized officer determines that the processing of the application, in the cycle of on-going comprehensive land use plans, will not be completed by December 1, 1984.

(c) (1) Each applicant may file a request with the authorized officer:

(i) For an estimate of when the application shall be processed in the cycle of on-going comprehensive land use plans; and

(ii) To have the applicant's application processed in advance of the period specified in the authorized officer's estimate.

(2) The request shall include a statement of how the applicant will benefit from having the application processed more quickly than otherwise scheduled, and shall specify how the pendency of the application affects the applicant's production, marketing or use of coal before 1986.

(3) If the authorized officer concludes that the failure to process an application apart from the cycle of on-going comprehensive land use plans would cause the applicant substantial hardship, the authorized officer may process the application apart from the cycle of on-going comprehensive land use plans in a land use analysis.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25798, July 8, 1987]

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§ 3430.3-2 Environmental analysis.

(a) After the applicant has completed the initial showing required under § 3430.2 of this title, the authorized officer shall conduct an environmental analysis of the proposed preference right lease area and prepare an environmental assessment or environmental impact statement on the application.

(b) The environmental analysis may be conducted in conjunction with and included as part of the environmental impact statement required for coal activity planning under § 3420.3-4 of this title.

(c) Except for the coal preference right lease applications analyzed in the *San Juan Regional Coal Environmental Impact Statement* (March 1984), the *Savery Coal EIS* (July 1983), and the *Final Decision Record and Environmental Assessment of Coal PRLAs (Beans Spring, Table, and Black Butte Creek Projects)* (September 1982), or covered by serial numbers C-0127832, C-0123475, C-0126669, C-8424, C-8425, W-234111, C-0127834, U-1362, NM-3099, F-014996, F-029746, and F-033619, the authorized officer shall prepare environmental impact statements for all preference right lease applications for coal for which he/she proposes to issue a lease, in accordance with the following procedures:

(1) The authorized officer shall prepare adequate environmental impact statements and other National Environmental Policy Act documentation, prior to the determination that commercial quantities of coal have been discovered on the lands subject to a preference right lease application, in order to assure, *inter alia,* that the full cost of environmental impact mitigation, including site-specific lease stipulations, is included in the commercial quantities determination for that preference right lease application.

(2) The authorized officer shall prepare and evaluate alternatives that will explore various means to eliminate or mitigate the adverse impacts of the proposed action. The impact analysis shall address each numbered subject area set forth in § 3430.4-4 of this title, except that the impact analysis need not specifically address the subject areas of Mine Planning or of Bonding. At a minimum, each environmental impact statement shall include:

(i) A “no action” alternative that examines the impacts of the projected development without the issuance of leases for the preference right lease applications;

(ii) An alternative setting forth the applicant's proposed action. This alternative shall examine the applicant's proposal, based on information submitted in the applicant's initial showing and standard lease stipulations;

(iii) An alternative setting forth the authorized officer's own proposed action. This alternative shall examine:

(A) The impacts of mining on those areas encompassed by the applicant's proposal that are found suitable for further consideration for mining after the unsuitability review provided for by subpart 3461 of this title; and

(B) The impacts of mining subject to appropriate special stipulations designed to mitigate or eliminate impacts for which standard lease stipulations may be inadequate. With respect to mitigation of significant adverse impacts, alternative lease stipulations shall be developed and preferred lease stipulations shall be identified and justified. The authorized officer shall state a preference between standard lease stipulations and special stipulations (performance standards or design criteria).

(iv) An exchange alternative, examining any reasonable alternative for exchange that the Secretary would consider were the applicant to show commercial quantities, and, in cases where, if the lands were to be leased, there is a finding that the development of the coal resources is not in the public interest.

(v) An alternative exploring the options of withdrawal and just compensation and examining the possibility of Secretarial withdrawal of lands covered by a preference right lease application (assuming commercial quantities will be shown) while the Secretary seeks congressional authorization for purchase or condemnation of the applicant's property, lease or other rights.

(3) The authorized officer shall prepare a cumulative impact analysis in accordance with 40 CFR 1508.7 and 1508.25 that examines the impacts of the proposed action and the alternatives when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions.

(i) The cumulative impact analysis shall include an analysis of the combined impacts of the proposed preference right leasing with the mining of currently leased coal and other reasonably foreseeable future coal development, as well as other preference right leasing in the area under examination.

(ii) The cumulative impact analysis shall also examine the impacts of the proposed preference right leasing in conjunction with impacts from non-coal activities, such as mining for other minerals, other projects requiring substantial quantities of water, and other sources of air pollution.

(4) When information is inadequate to estimate impacts reasonably, the authorized officer shall comply with the provisions of 40 CFR 1502.22(b).

(5) Each environmental impact statement shall be prepared in accordance with the Council of Environmental Quality's National Environmental Policy Act regulations, 40 CFR part 1500.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25798, July 8, 1987]

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§ 3430.4 Final showing.

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§ 3430.4-1 Request for final showing.

(a) Upon completion of the environmental assessment or impact statement on the application, the authorized officer shall, if not previously submitted, request a final showing by the applicant.

(b) The authorized officer shall transmit to the applicant, separately or with a request for a final showing, the following:

(1) The proposed lease form, including any proposed stipulations; and

(2) A copy of the environmental assessment or impact statement on the application including a map or maps showing all areas subject to specific conditions or protective stipulations because they have been assessed or designated to be unsuitable for all or certain stipulated methods of coal mining, or because of other identified values that are not embodied in the unsuitability criteria in subpart 3461 of this title.

(c) The authorized officer shall process all preference right lease applications, except for those preference right lease applications numbered F-029746 and F-033619, in accordance with the following standards and procedures:

(1) The authorized officer shall transmit a request for final showing to each applicant for each preference right lease application for which it proposes to issue a lease.

(2) Copies of each request shall be sent to all interested parties.

(3) The request shall contain proposed lease terms and special stipulations;

(d) Within 90 days of receiving the proposed lease form, the applicant shall submit the following information:

(1) Estimated revenues;

(2) The proposed means of meeting the proposed lease terms and special conditions and the estimated costs that a prudent person would consider before deciding to operate the proposed mine, including but not limited to, the cost of developing the mine, removing the coal, processing the coal to make it salable, transporting the coal, paying applicable royalties and taxes, and complying with applicable laws and regulations, the proposed lease terms, and special stipulations; and

(3) If the applicant intends to mine the deposit in the lands covered by a preference right lease application as part of a logical mining unit, the applicant shall include the estimated costs and revenue of the combined mining venture.

(e) The applicant may withdraw any lands from the application and delete them from the final showing if the applicant is no longer interested in leasing such lands or if such lands would be subject to special conditions or protective stipulations and the cost of mining the lands subject to these conditions or protective stipulations would adversely affect the commercial quantities determination.

(f) The applicant may delete any area subject to special conditions or protective stipulations, because it has been assessed to be unsuitable or otherwise, and the costs of mining subject to the conditions or protective stipulations, from the final showing required by paragraph (c) of this section.

(g) All data submitted by the preference right lease applicant that is labeled as privileged or confidential shall be treated in accordance with the provisions of part 2 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25799, July 8, 1987]

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§ 3430.4-2 Additional information.

(a) If the applicant for a preference right lease has submitted timely, some, but not all of the information required in § 3430.4-1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested additional information within 60 days of the receipt of the request. The authorized officer may grant one 60-day extension if the applicant files a written request within the first 60-day period.

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§ 3430.4-3 Costing document and public review.

(a) The authorized officer shall prepare a document that estimates the cost of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environment and mitigate the adverse environmental impacts of mining.

(1) The costs shall be calculated for each of the various numbered subject areas contained in § 3430.4-4 of this title.

(2) The authorized officer's estimated costs of compliance may be stated in ranges based on the best available information. If a range is used, he/she shall identify the number from each

range that the authorized officer proposes to use in making the determination whether a particular applicant has identified coal in commercial quantities.

(b) The authorized officer shall provide for public review of the costs of environmental protection associated with the proposed mining on the preference right lease application area.

(1) The authorized officer shall send the Bureau's cost estimate document to the preference right lease applicant and provide at least 30 days for the applicant to review said document before a notice of availability is published in the FEDERAL REGISTER. Comments submitted by the applicant, and the Bureau's response to the comments, shall be made available to the public for review and comment at the time the cost estimate document is made available.

(2) The authorized officer then shall publish in the FEDERAL REGISTER a notice of the availability of the Bureau's cost estimation document.

(3) The authorized officer also shall send the cost estimation document to all interested parties, including all agencies, organizations, and individuals that participated in the environmental impact statement or the scoping process.

(4) Copies of the cost estimation document shall be submitted to the Environmental Protection Agency.

(5) The public shall be given a period of not less than 60 days from the date of the publication of the notice in the FEDERAL REGISTER to comment on the Bureau's cost estimates.

(c) The cost estimate document and all substantive comments received (or summaries thereof if the response is voluminous) shall be part of the Record of Decision for the preference right lease application(s) (See 40 CFR 1505.2).

(1) The authorized officer shall respond to each substantive comment in the Record of Decision by modifying or supplementing his/her cost estimates, or explaining why they were not modified or supplemented in response to the comments.

(2) The authorized officer shall submit a copy of the Record of Decision with the public comments and the Bureau's response to the Environmental Protection Agency.

(3) The authorized officer shall publish a notice of the availability of each Record of Decision in the FEDERAL REGISTER.

(4) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability required by paragraph (c)(3) of this section.

[52 FR 25799, July 8, 1987]

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§ 3430.4-4 Environmental costs.

Prior to determining that a preference right lease applicant has discovered coal in commercial quantities, the authorized officer shall include the following listed and any other relevent environmental costs in the adjudication of commercial quantities (examples may not apply in all cases, neither are they all inclusive):

(a) *Permitting.* (1) Surface water—cost of collecting and analyzing baseline data on surface water quality and quantity (collecting and analyzing samples, constructing and maintaining monitoring facilities, purchasing equipment needed for surface water monitoring).

(2) Groundwater—costs of collecting and analyzing baseline data on groundwater quality and quantity (collecting and evaluating samples from domestic or test wells, purchasing well casings and screens and monitoring equipment, drilling and maintenance of test wells).

(3) Air quality—costs of collecting and analyzing baseline air quality data (purchasing rain, air direction, and wind guages and air samplers and evaporation pans).

(4) Vegetation—costs of collecting and analyzing data on indigenous vegetation (collecting and classifying samples for productivity analyses).

(5) Wildlife—costs of collecting and analyzing baseline data on wildlife species and habitats (collecting wildlife and specimens and data and purchasing traps and nets).

(6) Soils—costs of collecting and analyzing baseline soil data (collecting and analyzing soil samples by physical and chemical means).

(7) Noise—costs of collecting and analyzing baseline data on noise (purchasing necessary equipment).

(8) Socio-economics—costs of conducting social and economic studies for baseline data (collecting and evaluating social and economic data).

(9) Archaeology, history, and other cultural resources—costs of collecting and analyzing data on archaeology, history, and other cultural resources (conducting archaelogical excavations and historical and cultural surveys).

(10) Paleontology—costs of collecting and analyzing paleontological data (conducting surveys and excavations).

(11) Geology—costs of collecting and analyzing baseline geological data (drilling overburden cores and conducting physical and chemical analyses).

(12) Subsidence—costs of collecting and analyzing data on subsidence (setting monuments to measure subsidence).

(13) Mine planning—costs of developing mine permit application package (development of operating, blasting, air and water pollution control, fish and wildlife, and reclamation plans).

(b) Mining—environmental mitigation required by law or proposed to be imposed by the authorized officer.

(1) Surface water protection—costs of mitigating the impacts of mining on the quantity of surface water (purchasing relacement water and transporting it) and on the quality of surface water (construction sedimentation ponds, neutralization facilities, and diversion ditches).

(2) Groundwater protection—costs of mitigating the impacts of mining on the quantity of groundwater (replacing diminished supplies or water rendered unfit for its prior use(s)) and on the quality of groundwater (treating pumped mine water, compensating for damage to water rights, sealing sedimentation ponds).

(3) Air pollution control—costs of mitigating the impacts of mining on air quality (compliance with National Ambient Air Quality Standard and Protection from Significant Deterioration requirements using water and chemical sprays for dust control, installing and operating dust and other pollution collections).

(4) Noise abatement—costs of mitigating the impacts of mining on noise levels in mining area (installing and maintaining noise mufflers on equipment and around the mine site).

(5) Wildlife—costs of mitigating impacts to wildlife species identified as reasonably likely to occur and subject to proposed lease stipulations, and including costs of compliance with the Endangered Species Act and other laws, regulations, and treaties concerning wildlife protection.

(6) Socio-economics—costs of implementing any mitigation measure the Bureau or any other government agency has imposed; and of mitigating impacts on surface owners and occupants, including relocation costs and costs of compensation for improvements, crops, or grazing values.

(7) Archaeology, history, and other cultural—costs of monitoring and inspection during mining to identify archaeological, historical, and other cultural resources, and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(8) Paleontological—costs of monitoring and inspection during mining to identify paleontological resources and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(9) Subsidence—costs of mitigating the impacts of subsidence identified as reasonably likely to occur and subject to proposed lease stipulations.

(10) Monitoring—costs of purchasing and maintaining facilities, equipment, and personnel to accomplish monitoring required as a permit condition or lease stipulation, or by law or regulation.

(c) *Reclamation.* (1) Topsoil removal and replacement—costs of reclaiming soil by stockpiling or continuous methods (removing and stockpiling and replacing topsoil, protecting the stockpile, if necessary, from erosion and compacting).

(2) Subsoil removal and replacement—costs of reclaiming subsoil by stockpiling or continuous method (removing and stockpiling and replacing subsoil, protecting the stockpile, if necessary, from erosion and compacting).

(3) Site restoration—costs of removing structures necessary to mining operations but not part of original land features (sedimentation ponds, roads, and buildings).

(4) Grading—costs of grading soil banks to their approximate original contour before replacing topsoil and subsoil, if applicable, and revegetating the affected area.

(5) Revegetation—costs of restoring vegetative cover to the affected area after grading and replacement of topsoil and subsoil, if applicable (liming, planting, irrigating, fertilizing, cultivating, and reworking, if first efforts are unsuccessful).

(6) Bonds—costs of bonds required by Federal, State and local governments.

[52 FR 25799, July 8, 1987]

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§ 3430.5 Determination of entitlement to lease.

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§ 3430.5-1 Rejection of application.

(a) The authorized officer shall reject the application if:

(1) The applicant fails to show that coal exists in commercial quantities on the applied for lands; or

(2) The applicant does not respond to a request for additional information within the time period specified in § 3430.3-2 or § 3430.4-2 of this title; or

(3) The applicant otherwise failed to meet statutory or regulatory requirements; or

(4) The applicant does not permit declassification of proprietary information within the time period specified in § 3430.2-2(b) of this title.

(b)(1) The authorized officer shall reject those portions of an otherwise acceptable application which were not available for prospecting when the underlying prospecting permit was issued because the lands were claimed, developed or withdrawn from coal leasing.

(2) In any action under this subsection, the authorized officer shall reject all lands in each affected smallest legal subdivision or, if practicable, each affected 10 acre aliquot part of the subdivision.

(c) The authorized officer may reject any preference right lease application that clearly cannot satisfy the commercial quantities test without preparing additional National Environmental Policy Act documentation and/or a cost estimate document as described in §§ 3430.3-2, 3430.4-3 and 3430.4-4 of this title. The following procedures apply to rejecting these preference right lease applications:

(1) When an applicant clearly fails to meet the commercial quantities test as provided in this part, the authorized officer may notify the applicant:

(i) That its preference right lease application will be rejected;

(ii) Of the reasons for the proposed rejection;

(iii) That the applicant has 60 days in which to provide additional information as to why its preference right lease application should not be rejected; and

(iv) Of the type, quantity, and quality of additional information needed for reconsideration.

(2) If, after the expiration of the 60-day period, the authorized officer has no basis on which to change his/her decision, the authorized officer shall reject the preference right lease application.

(3) If the authorized officer reconsiders and changes the decision to reject the preference right lease application, he/she shall continue to adjudicate the preference right lease application in accordance with §§ 3430.3-2, 3430.4-3, and 3430.4-4 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25800, July 8, 1987]

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§ 3430.5-2 Appeals, lack of showing.

(a) If the application is rejected because the existence of commercial quantities of coal has not been shown, the applicant may, in accordance with the procedures in part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

(b) The applicant shall have the right to a hearing before an Administrative Law Judge if the applicant alleges that the facts in the application are sufficient to show entitlement to a lease.

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

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§ 3430.5-3 Determination to lease.

A preference right lease shall be issued if, upon review of the application, any available land use plan and the environmental assessment or environmental impact statement, the authorized officer determines that:

(a) Coal has been discovered in commercial quantities on the lands applied for;

(b) The applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(c) The conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated.

[47 FR 33143, July 30, 1982]

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§ 3430.5-4 Lease exchange.

(a) Upon the request of the applicant, the Secretary may initiate lease exchange procedures under subpart 3435 of this title if the lands under application have been shown to contain coal in commercial quantities.

(b) Upon the request of the authorized officer, or at the request of the regional coal team or the Governor of the affected State(s), the Secretary may initiate lease exchange procedures under subpart 3435 of this title if:

(1) The lands under application have been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as lands which should be unavailable for coal development because of land use or resource conflicts or as lands which are unsuitable for coal mining under the provisions of subpart 3461 of this title; and

(3) The lands are exempted from the application of any relevant unsuitability criteria or the Secretary lacks the authority to prevent damage to or loss of the land use or resource values threatened by lease operations.

[47 FR 33143, July 30, 1982, as amended at 48 FR 37656, Aug. 19, 1983]

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§ 3430.6 Lease issuance.

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§ 3430.6-1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in part 3470 of this title.

[47 FR 33144, July 30, 1982]

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§ 3430.6-2 Bonding.

The lease bond for a preference right lease shall be set in accordance with subpart 3474 of this title.

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§ 3430.6-3 Duration of leases.

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in § 3483.1 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end of each period of 10 years thereafter in accordance with subpart 3451 of this title.

[44 FR 42628, July 19, 1979. Redesignated and amended at 47 FR 33144, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

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§ 3430.7 Trespass.

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

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Subpart 3431—Negotiated Sales: Rights-of-Way

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§ 3431.0-1 Purpose.

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*).

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§ 3431.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 30, 1978 (30 U.S.C. 201(a)(1)).

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§ 3431.1 Qualified purchaser.

Any person who has acquired or applied for a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 which requires the removal of coal deposits as a necessary incident to development, construction or use of the right-of-way is qualified to purchase the coal to be removed.

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§ 3431.2 Terms and conditions of sale.

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject to the same requirements for health and safety protection, surface protection and rehabilitation that apply to the lease involved, and provisions for adequate recovery and conservation of the coal deposit.

(c) Where the right-of-way is not being used in the develoment of a Federal coal lease, the removal of the coal shall be made subject to the Surface Mining Control and Reclamation Act of 1977, and subject to such terms and conditions as the authorized officer of the surface management agency determines are necessary: (1) To protect public health, safety, and the environment; and (2) to ensure adequate recovery and conservation of the coal deposits in the right-of-way.

(d) All terms and conditions of the sale shall be terms and conditions of the right-of-way and shall be administered under the provisions of Group 2800 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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Subpart 3432—Lease Modifications

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§ 3432.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 3 of the Mineral Leasing Act of 1920, as amended by section 13 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 203).

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§ 3432.1 Application.

(a) A lessee may apply for a modification of a lease to include coal lands or coal deposits contiguous to those embraced in a lease. In no event shall the acreage in the application, when combined with the total area added by all modifications made after August 4, 1976, exceed 160 acres or the number of acres in the original lease, whichever is less.

(b) The lessee shall file the application for modification in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR subpart 1821), describing the additional lands desired, the lessee's needs or reasons for such modification, and the reasons why the modification would be to the advantage of the United States.

[44 FR 42628, July 19, 1979, as amended at 44 FR 56340, Oct. 1, 1979]

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§ 3432.2 Availability.

(a) The authorized officer may modify the lease to include all or part of the lands applied for if he determines that: (1) The modification serves the interests of the United States; (2) there is no competitive interest in the lands or deposits; and (3) the additional lands or deposits cannot be developed as part of another potential or existing independent operation.

(b) Coal deposits underlying land the surface of which is held by a qualified surface owner, and which would be mined by other than underground mining techniques, may not be added to a lease by modification.

(c) The lands applied for shall be added to the existing lease without competitive bidding, but the United States shall receive the fair market value of the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands added to the lease by the modification.

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§ 3432.3 Terms and conditions.

(a) The terms and conditions of the original lease shall be made consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of section 6 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 207; 43 CFR 3473.3-2) shall not apply to any lands covered by the lease prior to its modification until the lease is readjusted.

(b) Before a lease is modified, the lessee shall file a written acceptance of the conditions imposed in the modified lease and a written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

(c) Before modifying a lease, BLM will prepare an environmental assessment or environmental impact statement covering the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(d) For coal lease modification applications involving lands in the National Forest System, BLM will submit the lease modification application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment, for the attachment of appropriate lease stipulations, and for making any other findings prerequisite to lease issuance.

[44 FR 42628, July 19, 1979, as amended at 67 FR 63567, Oct. 15, 2002]

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Subpart 3435—Lease Exchange

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§ 3435.0-1 Purpose.

The objective of these regulations is to provide methods for exchange of coal resources when it would be in the public interest to shift the impact of mineral operations from leased lands or portions of leased lands to currently unleased lands to preserve public resource or social values, and to carry out Congressional directives authorizing coal lease exchanges.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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§ 3435.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 3 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 203);

(2) Section 510(b)(5) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1260(b)(5));

(3) Section 1 of the Act of October 30, 1978 (92 Stat. 2073);

(4) Section 1 of the Act of October 19, 1980 (94 Stat. 2269); and

(5) Section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (94 Stat. 2272).

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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§ 3435.1 Coal lease exchanges.

Where the Secretary determines that coal exploration, development and mining operations would not be in the public interest on an existing lease or preference right lease application or portions thereof, or where the Congress has authorized lease exchange for a class or list of leases, an existing lease or preference right lease application may be relinquished in exchange for:

(a) Leases where the Congress has specifically authorized the issuance of a new coal lease;

(b) The issuance of coal lease bidding rights of equal value;

(c) A lease for a mineral listed in subpart 3526 of this title by mutual agreement between the applicant and the Secretary; and

(d) Federal coal lease modifications; or

(e) Any combination of the above.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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§ 3435.2 Qualified exchange proponents: Limitations.

(a) Any person who holds a Federal coal lease, or a preference right lease application that has been found to meet the commercial quantities requirements of §§ 3430.1 and 3430.5 of this title on lands described in § 3435.1 of this title is qualified to ask the Secretary to initiate an exchange.

(b) Except for leases qualified under subpart 3436 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases where the Congress has specifically authorized such exchanges.

(c) The Secretary shall evaluate each qualified exchange request and determine whether an exchange is in the public interest.

(d) Any modification of a coal lease in an exchange under this subpart shall be subject to the limitations in §§ 3432.1(a), 3432.2(b) and 3432.3(a) of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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§ 3435.3 Exchange procedures.

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§ 3435.3-1 Exchange notice.

(a) The Secretary shall initiate exchange procedures by notifying in writing a Federal coal lessee or preference right lease applicant that consideration of an exchange of mineral leases or other coal lease interests is appropriate. The notification may be on the Secretary's initiative or in response to a request under § 3435.2 of this title.

(b) The exchange notice shall also be provided to the Governor of the affected State(s) concurrent with notice to the lessee or preference right lease applicant stating why the Secretary believes an exchange may be in the public interest.

(c) The exchange notice shall contain a description of the leased lands or lands under preference right lease application being considered for exchange. These lands may include all or part of an existing lease or preference right lease application.

(d) The exchange notice may contain a description of the lands for which the Secretary would grant an exchange lease or lease interest. If a coal lease modification would be granted by exchange, the lands shall be selected from those lands found acceptable for further consideration for coal leasing under § 3420.1 of this title; and

(e) The notice shall contain a request that the lessee or preference right lease applicant indicate whether he is willing to negotiate an exchange.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

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§ 3435.3-2 Initial response by lessee or lease applicant.

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or coal lease modification.

(b) A reply to the exchange notice by a lessee or preference right lease applicant indicating willingness to enter into an exchange shall also indicate willingness to provide the geologic and economic data needed by the Secretary to determine the fair market value of the lease or lease application to be relinquished. The lessee or preference right lease applicant shall also indicate willingness to provide any geologic and economic data in his possession that will help the Secretary to determine the fair market value of the potential Federal lease exchange tract or tracts.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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§ 3435.3-3 Agreement to terms.

(a) If both parties wish to proceed with the exchange, the authorized officer and the lessee or preference right lease applicant shall negotiate an exchange consistent with § 3435.1 of this title. The authorized officer shall consult with the regional coal team prior to initiation of such negotiations and shall consult again prior to finalization of the negotiated exchange.

(b) Land proposed for lease in exchange for, or for inclusion in, an existing lease or preference right lease application shall be subject to leasing under Group 3400 or 3500 of this title as appropriate, and any coal lands shall have been found to be acceptable for further consideration for leasing under § 3420.1 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

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§ 3435.3-4 Determination of value.

The value of the land to be leased, or added by lease modification, or of the bidding rights to be issued in exchange shall, to the satisfaction of the lessee or lease applicant and the Secretary, be equal to the estimated fair market value of the lease or lease application to be relinquished.

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§ 3435.3-5 Notice of public hearing.

After the lessee or lease applicant and the Secretary agree on an exchange proposal, notice of the exchange proposal shall be published in the FEDERAL REGISTER and in at least 1 newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least 1 public hearing shall be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. Any notice of the availability of a draft environmental assessment or environmental impact statement on the exchange may be used to comply with this section.

[47 FR 33144, July 30, 1982]

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§ 3435.3-6 Consultation with Governor.

(a) The Secretary shall notify the Governor of each state in which lands in the proposed exchange are located of the terms of the exchange and the Secretary's preliminary findings why the exchange is in the public interest. The Secretary shall give each Governor 45 days to comment on the proposal prior to consummating the exchange.

(b) If, within the 45 day period, the Governor(s), in writing, objects to an exchange that involves leases or lease rights in more than one state, the Secretary will not consummate the exchange for 6 months from the date of objection. The Governor(s) may during this 6-month period submit a written statement why the exchange should not be consummated, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

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§ 3435.3-7 Consultation with the Attorney General.

In any exchange which, if consummated, shall result in the issuance of a Federal coal lease, the Secretary, after issuing an exchange notice under § 3435.3-1 of this title and before issuance of a written decision under § 3435.4 of this title.

(a) Shall require the lessee or lease applicant to submit the information in § 3422.3-4 of this title; and

(b) If the Attorney General, within 30 days, objects to lease issuance, shall not issue the exchange lease except after complying with the provisions of § 3422.3-4(f)(2) of this title.

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§ 3435.4 Issuance of lease, lease modification or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that an exchange is in the public interest, the Secretary shall transmit to the lessee or preference right lease applicant:

(1) A statement of the Secretary's findings that lease issuance is in the public interest;

(2) Either (i) copies of the coal or other mineral exchange lease or coal lease modification containing the terms, conditions and special stipulations under which the lease or coal lease modification is to be granted, or (ii) a statement describing the terms and conditions of the coal lease bidding rights to be granted in exchange; and

(3) A statement for execution by the lessee or preference right lease applicant relinquishing all right or interest in the lease or preference right lease application, or portion thereof, to be exchanged.

(b) The exchange lease, lease modification or coal lease bidding rights shall be issued upon relinquishment of the lease, preference right lease application, or portion thereof.

(c) The exchange lease or lease modification shall be subject to all relevant provisions of Group 3400 or 3500 of this title and 30 CFR Chapter VII, Subchapter D as appropriate.

[47 FR 33144, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

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Subpart 3436—Coal Lease and Coal Land Exchanges: Alluvial Valley Floors

SOURCE: 47 FR 33145, July 30, 1982, unless otherwise noted.

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§ 3436.0-1 Purpose.

The purpose of this subpart is to establish criteria and procedures for the exchange of coal leases and for the exchange of fee held coal for unleased federally-owned coal in cases where surface coal mining operations on the lands that are covered by an existing coal lease or that are fee held would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity or quality of water in surface or underground systems that supply those alluvial valley floors.

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§ 3436.0-2 Objective.

(a) The objective of this subpart is to provide relief to persons holding leases for Federal coal deposits or fee title to coal deposits which underlie or are near alluvial valley floors and which cannot be mined through surface mining operations under section 510(b)(5) of the Surface Mining Control and Reclamation Act, through the exchange of lands, or interests therein, pursuant to the authority granted by the statutory provision.

(b) The Secretary shall exercise the authority to dispose of Federal coal deposits by lease to meet this objective when he/she determines that the exchange would serve the public interest. In determining whether such an exchange will serve the public interest, the Secretary will consider a wide variety of factors, including better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. Unless consideration of the above factors would show otherwise, it will be assumed that an exchange will serve the public interest if substantial financial and legal commitments have been made toward development of the offered coal resource.

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§ 3436.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

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§ 3436.0-5 Definitions.

As used in this subpart, the term *substantial financial and legal commitments* is a relative one, and the determination whether such commitments have been made, so as to qualify a person for an exchange under this subpart, will be made on a case-by-case basis. In making this determination, the Secretary will consider the level of expenditures made prior to January 1, 1977, that are related to development of the coal resource which is offered in exchange, taken together with the damages for which the person would be liable as a result of any legal commitments made prior to January 1, 1977, in connection with development of said coal resource, and the Secretary will compare that level of expenditure to the estimated total cost of developing the coal resource to the point of establishing a producing surface coal mining operation.

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§ 3436.1 Coal lease exchanges.

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§ 3436.1-1 Qualified lease proponents.

(a) Coal lease exchanges under this program shall be available only to persons who:

(1) Hold a Federal coal lease or preference right lease application covering lands that include or are near an alluvial valley floor located west of the 100th Meridian, west longitude, where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems that would supply the alluvial valley floor;

(2) Have made substantial financial and legal commitments prior to January 1, 1977, in connection with the lease or preference right lease application; and

(3) Are not entitled to continue any existing surface coal mining operations pursuant to the first proviso of section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Persons seeking an exchange bear the burden of establishing that they are qualified pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

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§ 3436.1-2 Federal coal deposits subject to lease by exchange.

The lease offered by the Secretary in exchange for existing coal leases shall be for Federal coal deposits determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1-5 or § 3420.2-3 of this title.

(a) Any person meeting the requirements of § 3436.1-1(a) of this title may apply for a lease exchange. No special form of application is required.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified and whether the exchange serves the public interest. The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

(c) After the Secretary and the exchange proponent have agreed to terms pursuant to § 3435.3-3 of this title, the Secretary may elect to consider the exchange proposal in conjunction with the activity planning process for the coal production region in which the lands proposed to be leased are located pursuant to § 3420.3 of this title. If the Secretary elects to process the exchange proposal in this manner, the tracts identified for use in the lease exchange shall be:

(1) Delineated for analysis pursuant to § 3420.3-3 of this title;

(2) Ranked as having high desirability pursuant to § 3420.3-4(a) of this title; and

(3) Selected for inclusion for analysis purposes in alternative proposed lease sale schedules pursuant to § 3420.3-4(c) of this title. Such tracts shall then be the subject of environmental analysis, public comment and consultation pursuant to §§ 3420.3 and 3420.4 of this title.

(d) If the Secretary elects to process the exchange proposal independently of the activity planning process, the Secretary shall consider the environmental and resource information acquired during the land use planning process and found in the most recent regional environmental impact statement completed under the Federal coal management program. An environmental assessment or environmental impact statement shall be prepared on the proposed exchange prior to the public hearings and consultation required by §§ 3435.3-5 through 3435.3-7 of this title.

(e) In determining under § 3435.3-4 of this title the estimated value of the lease or preference right lease application to be relinquished, the Secretary shall proceed as though there were no prohibitions on surface mining operations on the lands covered by the lease or preference right lease application.

(f) The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange, if the exchange is completed.

[47 FR 33145, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

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§ 3436.2 Fee coal exchanges.

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§ 3436.2-1 Qualified exchange proponents.

(a) Fee coal exchanges under this program shall only be available to persons who:

(1) Own coal west of the 100th Meridan, west longitude, underlying or near an alluvial valley floor where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems that would supply the alluvial valley floor; and

(2) Are not entitled to continue any existing surface coal mining operation pursuant to the first proviso to section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Exchange proponents bear the burden of establishing their qualifications pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

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§ 3436.2-2 Federal coal deposits subject to disposal by exchange.

The coal deposits offered in exchange by the Secretary shall be determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1 of this title and shall be in the same State as the coal deposit offered in exchange by the proponent.

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§ 3436.2-3 Exchange procedures.

(a) Any person meeting the requirements of § 3436.2-1(a) of this title may apply for an exchange. No special form of application is required. Any exchange proposal should be directed to the District Manager for the Bureau of Land Management district in which the Federal coal deposits are located.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified.

(c) After the authorized officer and the owner of the coal deposit underlying an alluvial valley floor identify Federal coal deposits that are suitable for consideration for disposition through exchange, the exchange shall be processed in accordance with part 2200 of this title, except as provided in this section.

(d) The Secretary may consolidate the environmental analysis for the proposed exchange with the regional environmental impact statement prepared on alternative leasing schedules for the coal production region in which the Federal coal deposits are located pursuant to § 3420.3-4 of this title. If the environmental analysis is not so consolidated, the Secretary shall consider environmental and other resource information obtained during the land use planning process or at other stages of the coal management program in preparing an appropriate environmental analysis or environmental impact statement on the proposed exchange.

(e) Exchanges shall be made on an equal value basis, provided that values of the lands exchanged may be equalized by the payment of money to the grantor or the Secretary so long as the payment does not exceed 25 percent of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the coal deposit underlying or near an alluvial valley floor, the Secretary shall proceed as though there were no prohibition on surface coal mining operations on the property.

[47 FR 33145, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

PART 3440—LICENSES TO MINE

Contents

AUTHORITY: 30 U.S.C. 181 *et seq.*

SOURCE: 44 FR 42634, July 19, 1979, unless otherwise noted.

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Subpart 3440—Licenses to Mine

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§ 3440.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 8 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 208).

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§ 3440.1 Terms.

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§ 3440.1-1 Forms.

(a) Four copies of the application for a license to mine coal for domestic needs or for a renewal of such a license shall be filed on a form approved by the Director, or a substantial equivalent of the form, in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR subpart 1821).

(b) The original application or any renewal application shall be accompanied by the fee prescribed in subpart 3473 of this title, except when the application is filed by a relief agency.

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§ 3440.1-2 Qualifications.

(a) An individual, association or individuals, municipality, charitable organization or relief agency may hold a license to mine. A municipality shall file the information required under § 3472.2-5(b) of this title.

(b) A license to mine shall not be issued to a private corporation.

(c) A license to mine shall not be issued to a minor, but may be issued to a legal guardian on behalf of a minor.

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§ 3440.1-3 Limitations on coal use.

(a) A license to mine may be issued to a municipality for the nonprofit mining and disposal of coal to its residents for household use only. Under such a license, a municipality may not mine

coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

(b) Coal extracted under a license to mine shall not be disposed of for profit.

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§ 3440.1-4 Area and duration of license.

(a) A license to mine for an individual or association in the absence of unusual conditions or necessity, shall be limited to a legal subdivision of 40 acres or less and may be revoked at any time. Each license to mine shall terminate at the end of 2 years from the date of issuance, unless an application for a 2 year renewal is filed and approved before its termination date.

(b) A license to mine to a municipality may not exceed 320 acres for a municipality of less than 100,000 population, 1,280 acres for a municipality between 100,000 and 150,000 population, and 2,560 acres for a municipality of 150,000 population or more. A license to mine to a municipality shall terminate at the end of 4 years from the date of issuance, unless an application for a 4 year renewal is filed and approved before the termination date.

(c) (1) The authorized officer may authorize a recognized and established relief agency of any state upon the agency's request, to take government-owned coal deposits within the state and provide the coal to localities where it is needed to supply families on the rolls of such agency who require coal for household use but are unable to pay for that coal.

(2) Tracts shall be selected in areas assessed as acceptable for mining operations and at points convenient to supply the families in a locality. Each family shall be restricted to the amount of coal actually needed for its use, not to exceed 20 tons annually.

(3) Coal shall be taken from such tracts only by those with written authority from the relief agency. All mining shall be done pursuant to such authorization.

[44 FR 42634, July 19, 1979, as amended at 47 FR 33146, July 30, 1982]

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§ 3440.1-5 Compliance with Surface Mining Control and Reclamation Act.

Mining on a license to mine shall not commence without a permit issued by the Surface Mining Officer unless the operation is exempt from the permit requirements under 30 CFR 700.11.

[44 FR 42634, July 19, 1979. Redesignated and amended at 47 FR 33146, July 30, 1982]

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§ 3440.1-6 Cancellation or forfeiture.

Any license to mine may be canceled or forfeited for violation of the Act under which the license to mine was issued, applicable Federal laws and regulations, or the terms and conditions of the license to mine.

[47 FR 33146, July 30, 1982]

PART 3450—MANAGEMENT OF EXISTING LEASES

Contents

AUTHORITY: 30 U.S.C. 181 *et seq.* ; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 *et seq.* ; and 43 U.S.C. 1701 *et seq.*

SOURCE: 44 FR 42635, July 19, 1979, unless otherwise noted.

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Subpart 3451—Continuation of Leases: Readjustment of Terms

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§ 3451.1 Readjustment of lease terms.

(a) (1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and, if the lease is extended, each 10-year period thereafter.

(2) Any lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section.

(b) If the lease became subject to readjustment of terms and conditions before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee whether or not a readjustment would be made, the terms and conditions of that lease shall not be readjusted retroactively to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976.

(c)(1) The authorized officer shall, prior to the expiration of the current or initial 20-year period or any succeeding 10-year period thereafter, notify the lessee of any lease which becomes subject to readjustment after June 1, 1980, whether any readjustment of terms and conditions will be made prior to the expiration of the initial 20-year period or any succeeding 10-year period thereafter. On such a lease the failure to so notify the lessee shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

(2) In any notification that a lease will be readjusted under this subsection, the authorized officer will prescribe when the decision transmitting the readjusted lease terms will be sent to the lessee. The time for transmitting the information will be as soon as possible after the notice that the lease shall be readjusted, but will not be longer than 2 years after such notice. Failure to send the decision transmitting the readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

(d) In the notification that the lease will be readjusted, the authorized officer may require the lessee to furnish information specified in § 3422.3-4 of this title for review by the Attorney General as required by section 27(1) of the Mineral Leasing Act of 1920, as amended. If the authorized officer requests the information specified, no lease readjustment shall be effective until 30 days after the authorized officer has transmitted the required information to the Attorney General. The lease shall be subject to cancellation if the lessee fails to furnish the required information within the time allowed.

(e) The Governor of the affected State will be sent a copy of the readjusted lease terms.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33146, July 30, 1982; 48 FR 37656, Aug. 19, 1983; 53 FR 37300, Sept. 26, 1988]

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§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the readjusted lease terms, the authorized officer will, within the time specified in the notice that the lease shall be readjusted, notify the lessee by decision of the readjusted lease terms.

(b) The decision transmitting the readjusted lease terms and conditions to the lessee(s) of record shall constitute the final action of the Bureau of Land Management on all the provisions contained in a readjusted lease and will be provided to the lessee(s) of record prior to the anniversary date. The effective date of the readjusted lease shall not be affected by the filing of any appeal of, or a civil suit regarding, any of the readjusted terms and conditions.

(c) The readjusted lease terms and conditions shall become effective on the anniversary date;

(d) The lessee may appeal the decision of the authorized officer in accordance with the procedure set out in 43 CFR part 4; and

(e) Regardless of whether an appeal is filed by the lessee(s), all of the readjusted lease terms and conditions, including, but not limited to, the reporting and payment of rental and royalty, shall be effective on the anniversary date.

[47 FR 33146, July 30, 1982, and 53 FR 37300, Sept. 26, 1988]

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Subpart 3452—Relinquishment, Cancellation, and Termination

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§ 3452.1 Relinquishment.

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§ 3452.1-1 General.

The lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres) or any bed of the coal deposit therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished. If the authorized officer accepts the relinquishment of any coal deposits in a lease, the coal reserves shall be adjusted in accordance with part 3480 of this title.

[47 FR 33147, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

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§ 3452.1-2 Where filed.

A relinquishment shall be filed in triplicate by the lessee in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR subpart 1821).

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§ 3452.1-3 Acceptance.

The effective date of the lease relinquishment shall, upon approval by an authorized officer, be the date on which the lessee filed the lease relinquishment. No relinquishment shall be approved until the authorized officer determines that the relinquishment will not impair the public interest, that the accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

[47 FR 33147, July 30, 1982]

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§ 3452.2 Cancellation.

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§ 3452.2-1 Cause for cancellation.

(a) The authorized officer, after compliance with § 3452.2-2 of this title, may take the appropriate steps to institute proceedings in a court of competent jurisdiction for the cancellation of the lease if the lessee: (1) Fails to comply with the provisions of the Mineral Leasing Act of 1920, as amended; (2) fails to comply with any applicable general regulations; or (3) defaults in the performance of any of the terms, covenants, and stipulations of the lease.

(b) Any lease issued before August 4, 1976, on which the lessee does not meet the diligent development requirements or any lease whenever issued on which the lessee does not meet the continued operation requirements shall be subject to cancellation in whole or in part. In deciding whether to initiate lease cancellation proceedings under this subsection, the Secretary shall not consider adverse circumstances which arise out of (1) normally foreseeable costs of compliance with requirements for environmental protection; (2) commonly experienced delays in delivery of supplies or equipment; or (3) inability to obtain sufficient sales.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

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§ 3452.2-2 Cancellation procedure.

The lessee shall be given notice of any default, breach or cause of forefeiture and be afforded 30 days to correct the default, to request an extension of time in which to correct the default, or to submit evidence showing why the lease should not be cancelled. The Governor of the affected State(s) shall be given reasonable notice of action taken by the Department of the Interior to initiate cancellation of the lease.

[44 FR 42635, July 19, 1979, as amended at 48 FR 37656, Aug. 19, 1983]

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§ 3452.3 Termination.

(a) Any lease issued or readjusted after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements.

(b) Should a lease be relinquished, cancelled or terminated for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties, already paid or due, shall be forfeited to the United States.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

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Subpart 3453—Transfers by Assignment, Sublease or Otherwise

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§ 3453.1 Qualifications.

(a) Leases may be transferred in whole or in part to any person, association or corporation qualified under subpart 3472 of this title to hold such leases, except as provided by § 3420.1-4(b)(1)(iv) and (2)(ii) of this title.

(b) Preference right lease applications may be transferred as a whole only to a person, association or corporation qualified under subpart 3472 of this title to hold a lease.

(c) Exploration licenses may be transferred in whole or in part subject to § 3453.3(b) of this title.

[47 FR 33147, July 30, 1982]

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§ 3453.2 Requirements.

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§ 3453.2-1 Application.

Applications for approval of any transfer of a lease, preference right lease application or exploration license or any interest in a lease or license, whether by direct assignment, working agreement, transfer of royalty interest, sublease, or otherwise, shall be filed within 90 days from final execution.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

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§ 3453.2-2 Forms and statements.

(a) Transfers of any record title interest shall be filed in triplicate and shall be accompanied by a request for approval from the transferee.

(b) No specific form need be used for requests for approval of transfers. The request for approval shall contain evidence of the transferee's qualifications, including a statement of Federal coal lease acreage holdings. This evidence shall consist of the same showing of qualifications required of a lease applicant by subpart 3472 of this title. A single signed copy of the qualifications statement is sufficient.

(c) A separate instrument of transfer shall be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation involving more than one lease are filed at the same time, one request for approval and one showing as to the qualifications of the transferee shall be sufficient.

(d) A single signed copy of all other instruments of transfer is sufficient, except that collateral assignments and other security or mortgage documents shall not be accepted for filing.

(e) Any transfer of a record title interest or assignment of operating rights shall be accompanied by the transferee's submission of the information specified in § 3422.3-4 of this title, including the holdings of any affiliate(s) (including joint ventures) of the transferees, or a statement incorporating a prior submission of the specified information by reference to the date

and lease, license or application serial number of the submission, and containing any and all changes in holdings since the date of the prior submission.

(f) Any document of transfer which does not contain a description of all consideration or value paid or promised for the transfer shall be accompanied by a separate statement of all consideration or value, whether cash, property, future payments or any other type of consideration, paid or promised for the transfer.

(g) Information submitted to comply with paragraphs (e) and (f) of this section may be labeled as proprietary data and shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

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§ 3453.2-3 Filing location and fee.

Instruments of transfer and requests for approval shall be filed in the Bureau of Land Management office having jurisdiction over the leased lands proposed for transfer (see 43 CFR subpart 1821). Each instrument of transfer shall be accompanied by a nonrefundable filing fee (see 43 CFR 3473.2).

[47 FR 33147, July 30, 1982]

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§ 3453.2-4 Bonds.

(a) If a bond is required, it shall be furnished before a lease, preference right lease application or exploration license may be approved for transfer. If the original lease, preference right lease application or exploration license required the maintenance of a bond, the transferee shall submit either a written consent from the surety to the substitution of the transferee as principal or a new bond with the transferee as principal. Transfers of any part of the leased or licensed lands shall be described by legal subdivisions. Before any transfer of part of a lease or license is approved, the transferee shall submit: (1) A written statement from the surety that it agrees to the transfer and that it agrees to remain bound as to the interest retained by the lessee or licensee; and (2) a new bond with the tranferee as principal covering the portion transferred.

(b) The transferor and the surety shall continue to be responsible for the performance of any obligation under the lease, preference right lease application or exploration license until the effective date of the approval of the transfer. If the transfer is not approved, the obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including any sublessee, applicant or licensee, and the transferee's surety shall be responsible for all lease, application or license obligations, notwithstanding any terms of the transfer to the contrary.

[47 FR 33147, July 30, 1982, as amended at 47 FR 38131, Aug. 30, 1982]

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§ 3453.2-5 Effect of partial assignment.

A transfer of full record-title to only part of the lands, or any bed of the coal deposits therein, shall segregate the transferred and retained portions into separate and distinct leases or licenses, with the retained portion keeping the original serial number. The newly segregated lease or license shall be assigned a new serial number and shall contain the same terms and conditions as the original lease or license.

[47 FR 33148, July 30, 1982]

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§ 3453.3 Approval.

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§ 3453.3-1 Conditions for approval.

(a) No transfer of a lease shall be approved if:

(1) The transferee is not qualified to hold a lease or an interest in a lease under subpart 3472 of this title or under §§ 3420.1-3(b)(1)(iv) and 3420.1-3(b)(2)(ii) of this title;

(2) The lease bond is insufficient;

(3) The filing fee has not been submitted;

(4) The transferee would hold the lease in violation of the acreage requirements set out in subpart 3472 of this title;

(5) The transfer would create an overriding royalty or other interest in violation of § 3473.3-2 of this title;

(6) The lease account is not in good standing;

(7) The information required under § 3453.2-2(e) and (f) of this title has not been submitted; or

(8) The transferee is subject to the prohibition in § 3472.1-2(e) of this title.

(b) When the licensee proposes to transfer an exploration license, any other participating parties in the license shall be given the right of first refusal. If none of the participating parties wishes to assume the license, the license may be transferred if:

(1) The exploration bond is sufficient;

(2) The filing fee has been submitted; and

(3) The license account is in good standing.

(c) A preference right lease application may be transferred as a whole only to any party qualified to hold a lease under subpart 3472 of this title.

[47 FR 33148, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

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§ 3453.3-2 Disapproval of transfers.

(a) The authorized officer shall deny approval of a transfer if any reason why the transfer cannot be approved (listed in § 3453.3-1 of this title) is not cured within the time established by the authorized officer in a decision notifying the applicant for approval why the transfer cannot be approved.

(b) The authorized officer shall not approve a transfer of a lease until 30 days after the requirements of § 3422.3-4 of this title have been met.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33148, July 30, 1982]

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§ 3453.3-3 Effective date.

A transfer shall take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests in writing, the first day of the month of the approval. The Governor of the affected State(s) shall be given reasonable notice of any lease transfer.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33148, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

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§ 3453.3-4 Extensions.

(a) The filing of or approval of any transfer shall not alter any terms or extend any time periods under the lease, including those dealing with readjustment of the lease and the diligent development and continued operation on the lease.

(b) The filing of or approval of a transfer of an exploration license shall not extend the term of the license beyond the statutory 2-year maximum.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33148, July 30, 1982; 47 FR 38131, Aug. 30, 1982]

PART 3460—ENVIRONMENT

Contents

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521- 531 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 44 FR 42638, July 19, 1979, unless otherwise noted.

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Subpart 3461—Federal Lands Review: Unsuitability for Mining

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§ 3461.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) The general unsuitability criteria in section 522(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(a));

(2) The Federal lands review in section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)); and

(3) The prohibitions against mining certain lands in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)).

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§ 3461.0-6 Policy.

The Department shall carry out the review of Federal lands under section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)) principally through land use planning assessments by the surface management agency regarding the unsuitability of Federal lands for all or certain stipulated methods of coal mining.

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§ 3461.0-7 Scope.

Each criterion in § 3461.1 of this title uses the phrase “shall be considered unsuitable” as shorthand for “shall be considered unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations, as defined in § 3400.0-5(mm) of this title.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33148, July 30, 1982]

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§ 3461.1 Underground mining exemption from criteria.

(a) Federal lands with coal deposits that would be mined by underground mining methods shall not be assessed as unsuitable where there would be no surface coal mining operations, as defined in § 3400.0-5 of this title, on any lease, if issued.

(b) Where underground mining will include surface operations and surface impacts on Federal lands to which a criterion applies, the lands shall be assessed as unsuitable unless the surface management agency finds that a relevant exception or exemption applies.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

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§ 3461.2 Unsuitability assessment procedures.

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§ 3461.2-1 Assessment and land use planning.

(a)(1) Each of the unsuitability criteria shall be applied to all coal lands with development potential identified in the comprehensive land use plan or land use analysis. For areas where 1 or more unsuitability conditions are found and for which the authorized officer of the surface management agency could otherwise regard coal mining as a likely use, the exceptions and exemptions for each criterion may be applied.

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the FEDERAL REGISTER. This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

(3) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each unsuitability criterion, exception and exemption. The authorized officer of the surface management agency shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions. Such areas may ultimately be leased provided that these conditions or stipulations are contained in the lease.

(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive

land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. It the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria, application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section.

(2) No lease tract shall be analyzed in a final regional lease sale environmental impact statement prepared under § 3420.4-5 of this title without significant data material to the application to the tract of each criterion described in § 3461.1 of this title, except, where necessary, criterion 19. If the data are lacking for the application of a criterion or exception to only a portion of the tract, and if the authorized officer determines that it is likely that stipulations in the lease or permit to conduct surface coal mining operations could avoid any problems which may result from subsequent application of the criterion or exception, such tract may be included and analyzed in the regional lease sale environmental impact statement.

(c) Any unsuitability assessments which result either from a designation or a termination of a designation of Federal lands as unsuitable by the Office of Surface Mining Reclamation and Enforcement, or from changes warranted by additional data acquired in the activity planning process, may be made without formally revising or amending the comprehensive land use plan or analysis.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982; 51 FR 18888, May 23, 1986. Redesignated and amended at 52 FR 46473, Dec. 8, 1987]

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§ 3461.2-2 Consultation on unsuitability assessments.

(a) Prior to adopting a comprehensive land use plan or land use analysis which assesses Federal lands as unsuitable for coal mining, the Secretary or other surface management agency shall complete the consultation set out in §§ 3420.1-6 and 3420.1-7 of this title.

(b) When consultation or concurrence is required in the application of any criterion or exception in § 3461.1 of this title, the request for advice or concurrence, and the reply thereto, shall be in writing. Unless another period is provided by law, the authorized officer shall specify that the requested advice, concurrence or nonconcurrence be made within 30 days.

(c) When the authorized officer does not receive a response either to a request for concurrence which is required by this subpart but not by law, or to consultation within the specified time, he or she may proceed as though concurrence had been given or consultation had occurred.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

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§ 3461.3 Relationship of leasing to unsuitability assessment.

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§ 3461.3-1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall only be applied, prior to lease issuance, to all lands leased after July 19, 1979.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application; or

(2) During land use planning under the provisions of § 3420.1-4 of this title.

[47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

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§ 3461.3-2 Application of criteria on leased lands.

The unsuitability criteria shall not be applied to leased lands.

[47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

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§ 3461.4 Exploration.

(a) Assessment of any area as unsuitable for all or certain stipulated methods of coal mining operations pursuant to section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) and the regulations of this subpart does not prohibit exploration of such area under subpart 3410 and Part 3480 of this title.

(b) An application for an exploration license on any lands assessed as unsuitable for all or certain stipulated methods of coal mining shall be reviewed by the Bureau of Land Management to ensure that exploration does not harm any value for which the area has been assessed as unsuitable.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985. Further redesignated at 52 FR 46473, Dec. 8, 1987]

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§ 3461.5 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.

(a)(1) *Criterion Number 1.* All Federal lands included in the following land systems or categories shall be considered unsuitable: National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, lands acquired with money derived from the Land and Water Conservation Fund, National Forests, and Federal lands in incorporated cities, towns, and villages.

(2) *Exceptions.* (i) A lease may be issued within the boundaries of any National Forest if the Secretary finds no significant recreational, timber, economic or other values which may be incompatible with the lease; and (A) surface operations and impacts are incident to an underground coal mine, or (B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those National Forests west of the 100th Meridian, that surface mining may be in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1976 and the Surface Mining Control and Reclamation Act of 1977.

(ii) A lease may be issued within the Custer National Forest with the consent of the Department of Agriculture as long as no surface coal mining operations are permitted.

(3) *Exemptions.* The application of this criterion to lands within the listed land systems and categories is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977.

(b)(1) *Criterion Number 2.* Federal lands that are within rights-of-way or easements or within surface leases for residential, commercial, industrial, or other public purposes, on federally owned surface shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued, and mining operations approved, in such areas if the surface management agency determines that:

(i) All or certain types of coal development (e.g., underground mining) will not interfere with the purpose of the right-of-way or easement; or

(ii) The right-of-way or easement was granted for mining purposes; or

(iii) The right-of-way or easement was issued for a purpose for which it is not being used; or

(iv) The parties involved in the right-of-way or easement agree, in writing, to leasing; or

(v) It is impractical to exclude such areas due to the location of coal and method of mining and such areas or uses can be protected through appropriate stipulations.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(c)(1) *Criterion Number 3.* The terms used in this criterion have the meaning set out in the Office of Surface Mining Reclamation and Enforcement regulations at Chapter VII of Title 30 of the Code of Federal Regulations. Federal lands affected by section 522(e) (4) and (5) of the Surface Mining Control and Reclamation Act of 1977 shall be considered unsuitable. This includes lands within 100 feet of the outside line of the right-of-way of a public road or within 100

feet of a cemetery, or within 300 feet of any public building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

(2) *Exceptions.* A lease may be issued for lands:

(i) Used as mine access roads or haulage roads that join the right-of-way for a public road;

(ii) For which the Office of Surface Mining Reclamation and Enforcement has issued a permit to have public roads relocated;

(iii) If, after public notice and opportunity for public hearing in the locality, a written finding is made by the authorized officer that the interests of the public and the landowners affected by mining within 100 feet of a public road will be protected.

(iv) For which owners of occupied dwellings have given written permission to mine within 300 feet of their buildings.

(3) *Exemptions.* The application of this criterion is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977.

(d)(1) *Criterion Number 4.* Federal lands designated as wilderness study areas shall be considered unsuitable while under review by the Administration and the Congress for possible wilderness designation. For any Federal land which is to be leased or mined prior to completion of the wilderness inventory by the surface management agency, the environmental assessment or impact statement on the lease sale or mine plan shall consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable, unless issuance of noncompetitive coal leases and mining on leases is authorized under the Wilderness Act and the Federal Land Policy and Management Act of 1976.

(2) *Exemption.* The application of this criterion to lands for which the Bureau of Land Management is the surface management agency and lands in designated wilderness areas in National Forests is subject to valid existing rights.

(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an areas of outstanding scenic quality or high vessel sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator has made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977, or which include operations on which a permit has been issued.

(f)(1) *Criterion Number 6.* Federal lands under permit by the surface management agency, and being used for scientific studies involving food or fiber production, natural resources, or technology demonstrations and experiments shall be considered unsuitable for the duration of the study, demonstration or experiment, except where mining could be conducted in such a way as to enhance or not jeopardize the purposes of the study, as determined by the surface management agency, or where the principal scientific user or agency gives written concurrence to all or certain methods of mining.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(g)(1) *Criterion Number 7.* All publicly or privately owned places which are included in the National Register of Historic Places shall be considered unsuitable. This shall include any areas that the surface management agency determines, after consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officer, are necessary to protect the inherent values of the property that made it eligible for listing in the National Register.

(2) *Exceptions.* All or certain stipulated methods of coal mining may be allowed if, after consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officer, they are approved by the surface management agency, and, where appropriate, the State or local agency with jurisdiction over the historic site.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(h)(1) *Criterion Number 8.* Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operation approved in an area or site if the surface management agency determines that:

(i) The use of appropriate stipulated mining technology will result in no significant adverse impact to the area or site; or

(ii) The mining of the coal resource under appropriate stipulations will enhance information recovery (e.g., paleontological sites).

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which includes operations on which a permit has been issued.

(i) (1) *Criterion Number 9.* Federally designated critical habitat for listed threatened or endangered plant and animal species, and habitat proposed to be designated as critical for listed threatened or endangered plant and animal species or species proposed for listing, and habitat for Federal threatened or endangered species which is determined by the Fish and Wildlife Service and the surface management agency to be of essential value and where the presence of threatened or endangered species has been scientifically documented, shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the Fish and Wildlife Service, the Service determines that the proposed activity is not likely to jeopardize the continued existence of the listed species and/or its critical habitat.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal

mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(j)(1) *Criterion Number 10.* Federal lands containing habitat determined to be critical or essential for plant or animal species listed by a state pursuant to state law as endangered or threatened shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the state, the surface management agency determines that the species will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(k)(1) *Criterion Number 11.* A bald or golden eagle nest or site on Federal lands that is determined to be active and an appropriate buffer zone of land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exceptions.* A lease may be issued if:

(i) It can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or

(ii) The surface management agency, with the concurrence of the Fish and Wildlife Service, determines that the golden eagle nest(s) will be moved.

(iii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(l)(1) *Criterion Number 12.* Bald and golden eagle roost and concentration areas on Federal lands used during migration and wintering shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that all or certain stipulated methods of coal mining can be conducted in such a way, and during such periods of time, to ensure that eagles shall not be adversely disturbed.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(m)(1) *Criterion Number 13.* Federal lands containing a falcon (excluding kestrel) cliff nesting site with an active nest and a buffer zone of Federal land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall

be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the falcon habitat during the periods when such habitat is used by the falcons.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(n)(1) *Criterion Number 14.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(o)(1) *Criteron Number 15.* Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and plant species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges crucial for deer, antelope, and elk;

(iii) Migration corridor for elk; and

(iv) Extremes of range for plant species; and

A lease may be issued if, after consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not have a significant long-term impact on the species being protected.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal and special floodplains (100-year recurrence interval) on which the surface management agency determines that mining could

not be undertaken without substantial threat of loss of life or property shall be considered unsuitable for all or certain stipulated methods of coal mining.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(q)(1) *Criterion Number 17.* Federal lands which have been committed by the surface management agency to use as municipal watersheds shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency in consultation with the municipality (incorporated entity) or the responsible governmental unit determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(r)(1) *Criterion Number 18.* Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of Federal lands ¼ mile from the outer edge of the far banks of the water, shall be unsuitable.

(2) *Exception.* The buffer zone may be eliminated or reduced in size where the surface management agency determines that it is not necessary to protect the National Resource Waters.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(s)(1) *Criterion Number 19.* Federal lands identified by the surface management agency, in consultation with the state in which they are located, as alluvial valley floors according to the definition in § 3400.0-5(a) of this title, the standards in 30 CFR Part 822, the final alluvial valley floor guidelines of the Office of Surface Mining Reclamation and Enforcement when published, and approved state programs under the Surface Mining Control and Reclamation Act of 1977, where mining would interrupt, discontinue, or preclude farming, shall be considered unsuitable. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would supply alluvial valley floors, the land shall be considered unsuitable.

(2) *Exemptions.* This criterion does not apply to surface coal mining operations which produced coal in commercial quantities in the year preceding August 3, 1977, or which had obtained a permit to conduct surface coal mining operations.

(t)(1) *Criterion Number 20.* Federal lands in a state to which is applicable a criterion (i) proposed by the state or Indian tribe located in the planning area, and (ii) adopted by rulemaking by the Secretary, shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued when:

(i) Such criterion is adopted by the Secretary less than 6 months prior to the publication of the draft comprehensive land use plan or land use analysis, plan, or supplement to a comprehensive land use plan, for the area in which such land is included, or

(ii) After consultation with the state or affected Indian tribe, the surface management agency determines that all or certain stipulated methods of coal mining will not adversely affect the value which the criterion would protect.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33148, July 30, 1982; 48 FR 54820, Dec. 7, 1983. Redesignated and amended at 52 FR 46473, Dec. 8 1987]

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Subpart 3465—Surface Management and Protection

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§ 3465.0-1 Purpose.

This subpart establishes rules for the management and protection of the surface of leased Federal lands when coal deposits are developed.

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§ 3465.0-3 Authority.

These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

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§ 3465.0-7 Applicability.

This subpart applies to leases and licenses to mine issued by the Bureau of Land Management for the development of Federal coal.

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§ 3465.1 Use of surface.

(a) The operator shall use only that part of the surface area included in his lease or license to mine that has been included in an approved resource recovery and protection plan and mining permit (43 CFR 3482.1(b) and 30 CFR part 741).

(b) Separate leases, permits, or rights-of-way under the appropriate provisions in title 43 of the Code of Federal Regulations are required for the installation of power generation plants or

commercial or industrial facilities on the lands in the lease or license to mine or for the use of mineral materials or timber from the land in the lease or license to mine.

(c) Other land uses under other authorities may be allowed on an area in a lease or license to mine provided there is no unreasonable conflict and that neither the mining operation nor the other use is jeopardized by the presence of the other.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

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§ 3465.2 Inspections and noncompliance.

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§ 3465.2-1 Inspections.

The authorized officer or his/her authorized representative shall have the right to enter lands under a lease or license to mine to inspect without advance notice or a search warrant, upon presentation of appropriate credentials, to determine whether the activities and conditions are in compliance with the applicable laws, regulations, notices and orders, terms and conditions of leases, licenses to mine or permits, and the requirements of the approved mining plan.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

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§ 3465.2-2 Discovery of noncompliance.

(a) Upon discovery of activities or conditions that are not in compliance with the terms of a lease or license to mine, or with an approved permit (30 CFR part 741), but that do not pose a serious and imminent danger to the public or to resources and environmental quality, the authorized officer shall refer the matter to the Surface Mining Officer for remedial action, or take remedial action on matters of exploration outside the permit area.

(b) Upon discovery of activities or conditions that are not in compliance with the terms of a lease, license to mine, or with an approved permit and that do pose a serious and imminent danger to the health and safety of the public or to resources and environmental quality, the authorized officer may order the immediate cessation of the activities or conditions provided that the Surface Mining Officer is immediately informed of the issuance of any such emergency cessation order.

[44 FR 42638, July 19, 1979. Redesignated at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

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§ 3465.2-3 Failure of lessee or holder of license to mine to act.

Failure of a lessee or the holder of a license to mine to comply with an immediate cessation order issued under § 3465.3-2(b) or with a written notice of noncompliance issued by the Surface Mining Officer in accordance with part 3480 of this title or 30 CFR Chapter VII, Subchapter D, or

by the authorized officer in accordance with part 3480 of this title, shall be grounds for suspension of the permit and may be grounds for cancellation of the license to mine, or in accordance with subpart 3452 of this title, the lease.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Contents

AUTHORITY: 30 U.S.C. 189 and 359; and 43 U.S.C. 1701 *et seq.*

SOURCE: 44 FR 42643, July 19, 1979, unless otherwise noted.

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Subpart 3471—Coal Management Provisions and Limitations

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§ 3471.1 Land description requirements.

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§ 3471.1-1 Land description and coal deposit in application.

(a) Any application for a lease, lease modification, or license to mine shall include a complete and accurate description of the lands for which the lease, lease modification, or license to mine is desired.

(b) If the land has been surveyed under the public land rectangular survey system, each application shall describe the land by legal subdivision (section, township, and range), or aliquot part thereof (but not less than 10 acres).

(c) Where protraction diagrams have been approved and the effective date has been published in the FEDERAL REGISTER, the application for land shown on such protraction diagrams and filed on or after the effective date shall contain a description of the land according to the section, township, and range shown on the approved protraction diagrams.

(d)(1) If the land has not been surveyed on the ground and is not shown on the records as covered by protraction diagrams, the application shall describe the land by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska, the description of unsurveyed land shall be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by an agency of the United States such as the Geological Survey, the National Oceanic and Atmospheric Administration, or the International Boundary Commission, if the record position is available to the general public.

(2)(i) If the land is acquired land in a non-public land state which has not been surveyed under the rectangular system of public land surveys, the land shall be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(ii) If the land constitutes less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into an identifiable point listed in the description in the deed or other document by which the United States acquired title to the land.

(iii) If the description in the deed or other document by which the United States acquired title to the land does not include the courses and distance between the successive angle points on

the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances.

(iv) The application shall be accompanied by a map on which the land is clearly marked showing its location with respect to the administrative unit or project of which it is a part. It is not necessary to submit a map if the land has been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system.

(v) If an acquisition tract number has been assigned by the acquiring agency to the tract, a description by tract number will be accepted.

(vi) Any accreted land not described in the deed to the United States shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

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§ 3471.1-2 Land description in lease.

(a) All unsurveyed lands in a public land survey system state shall have a cadastral survey performed at Federal Government expense before a lease or license to mine may be issued, except for areas covered by a skeleton survey, i.e. Utah and Alaska, and the lease when issued shall be described by legal subdivision (section, township, and range), or aliquot part thereof (but no less than 10 acres).

(b) If the land is acquired land in a non-public land state, the land in the lease shall be described in the same manner provided for lease applications under § 3471.1-1(d)(2) of this title.

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§ 3471.2 Effect of land transactions.

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§ 3471.2-1 Disposal of land with a reservation of minerals.

(a) Where the lands included in a lease or license to mine have been or may be disposed of with reservation of the coal deposits, a lessee or the holder of a license to mine must comply fully with the law under which the reservation was made. See, among other laws, the Acts of March 3, 1909 (34 Stat. 844; 30 U.S.C. 81); June 22, 1910 (35 Stat. 583; 30 U.S.C. 83-85); December 29, 1916, as amended (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377); and October 21, 1976 (90 Stat. 2759; 43 U.S.C. 1719).

(b) Any sale or conveyance of acquired lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under the Mineral Leasing Act for Acquired Lands.

(c) Leases on acquired lands outstanding on August 7, 1947, and covering lands subject to the Mineral Leasing Act for Acquired Lands may be exchanged for new leases to be issued under that Act.

(d) When: (1) The coal is to be mined by other than underground mining techniques, (2) the surface of the land is owned by a qualified surface owner, and (3) the lease is issued after August 3, 1977, the lessee shall comply with the terms of the written consent of the qualified surface owner not inconsistent with Federal and state mined land reclamation laws and regulations.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33149, July 30, 1982]

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§ 3471.2-2 Effect of conveyance to state or local entity.

(a) If the United States has conveyed the title to, or otherwise transferred control of the land surface containing the coal deposits to (1) any state or political subdivision, agency, or its instrumentality, (2) a college, any other educational corporation, or association, or (3) to a charitable or religious corporation or association, the transferee shall be notified by certified mail of the application for the license to mine or lease, or the scheduling of a lease sale. The transferee shall be given a reasonable period of time within which to suggest any stipulations necessary for the protection of existing surface improvements or uses to be included in the license or lease and state the supporting facts, or to file any objections to its issuance and state the supporting facts.

(b) Opposition by the state or local entity is not a bar to issuance of the license to mine or lease for the reserved minerals in the lands. (See, however, § 3461.1(b).) In each case, the final determination on whether to issue the license to mine or lease is based on the best interests of the public.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33149, July 30, 1982]

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§ 3471.3 Cancellation or forfeiture.

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§ 3471.3-1 Protection of *bona fide* purchaser.

(a) The Secretary's right to cancel or forfeit a lease for any violation shall not adversely affect the title or interest of a *bona fide* purchaser of any lease or any interest therein. A *bona fide* purchaser must be a person, association, or corporation qualified to hold such lease or interest, even though the holdings of the party or parties from which the lease or interest therein was acquired or their predecessor(s) in title (including the original lessee of the United States), may have been cancelled or forfeited for any such violation.

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws may be dismissed promptly as a party by showing that he/she holds and acquired his/her interest as a *bona fide* purchaser without having violated any provisions of the mineral leasing laws.

(c) If a party waives his or her rights under the lease, or if such rights are suspended by order of the Secretary pending a decision, rental payments and time counted against the term of the lease shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

[44 FR 42643, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982]

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§ 3471.3-2 Sale of underlying interests.

If, in any proceeding to cancel or forfeit a lease or any interest therein acquired in violation of any of the provisions of the mineral leasing laws, the lease or interest therein is cancelled or forfeited, and if there are valid options to acquire the lease or an interest therein that are not subject to cancellation, forfeiture, or compulsory disposition, this lease or interest therein shall be sold to the highest responsible qualified bidder by competitive bidding, in a manner similar to that provided for in the offering of leases by competitive bidding, subject to all outstanding valid interests and options. If less than the whole interest in the lease or interest therein is cancelled or forfeited, the partial interest shall be sold in the same way. If no satisfactory offer is obtained as a result of the competitive offering of a whole or partial interest, it may be sold by other methods that the authorized officer finds appropriate. However, the terms shall not be less favorable to the Government than those of the best competitive bid received.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33149, July 30, 1982]

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§ 3471.4 Future interest, acquired lands.

An application to lease lands in which the United States has a future interest filed more than 2 years prior to the date of the vesting in the United States of the interest in the coal shall be rejected. Any application for a future interest lease outstanding at the time of the vesting in the United States of the present possessory interest in the coal shall not lapse, but shall continue to be treated under subpart 3425 of this title. (See 43 CFR 3472.1-2(g).)

[44 FR 42643, July 19, 1979, as amended at 47 FR 33149, July 30, 1982]

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Subpart 3472—Lease Qualification Requirements

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§ 3472.1 Qualifications.

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§ 3472.1-1 Qualified applicants and bidders.

A lease may be issued only to (a) citizens of the United States; (b) associations of citizens organized under the laws of the United States or of any state thereof, which are authorized to hold such interests by the statute under which they are organized and by the instrument establishing their association; (c) corporations organized under the laws of the United States or of any state thereof, including a company or corporation operating a common carrier railroad; and (d) public bodies, including municipalities.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979]

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§ 3472.1-2 Special leasing qualifications.

(a) Each applicant or bidder for a lease shall furnish a signed statement showing that, with the area applied or bid for, the applicant or bidder's interests in leases and lease applications, held directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3472.1-3 of this title.

(b) A lease shall not be issued to a minor but may be issued to a legal guardian or trustee on behalf of a minor.

(c) Every company or corporation operating a common carrier railroad shall make a statement that it needs the coal for which it seeks a lease solely for its own railroad use; that it operates main or branch lines in the state in which the lands involved are located; that the aggregate acreage in the leases and applications in which it holds an interest, directly or indirectly, does not exceed 10,240 acres; and that it does not hold more than one lease for each 200 miles of its railroad lines served or to be served from such coal deposits. This last requirement excludes spurs or switches, branch lines built to connect the leased coal with the railroad, and parts of the railroad operated mainly by power not produced by steam.

(d) Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, that corporation's application or bid for a lease shall be rejected, and that corporation's lease shall be subject to cancellation.

(e)(1)(i) On or after December 31, 1986, no lease shall be issued and no existing lease shall be transferred to any entity that holds and has held for 10 years any lease from which the entity is not producing the coal in commercial quantities, except as authorized under the advance royalty or suspension provisions of part 3480 of this chapter, or paragraph (e) (4), (5), or (6) of this section.

(ii) An entity seeking to obtain a working interest in a lease, or approval of a transfer under subpart 3453 of this title, shall qualify both on the date of determination of lessee qualifications and on the date the lease is issued or transfer approved.

(iii) Once a lease has been issued to a qualified entity or transfer approved for a lease under subpart 3453 of this title, disqualification at a later date shall not result in surrender of that lease, or recision of the approved transfer, except as provided in paragraph (e)(4) of this section.

(2)(i) Any entity seeking to obtain a lease or approval of a transfer of a lease pursuant to 43 CFR Group 3400 of this title shall certify, in writing, that the entity is in compliance with the Act and the requirements of this subpart. The entity's self-certification statement shall include:

(A) A statement that the entity is qualified to be issued a lease or to have a transfer approved in accordance with the presumption of control or the presumption of noncontrol requirements at § 3400.0-5(rr) of this title, and in accordance with the producing requirements at paragraph (e)(6) of this section;

(B) Justification rebutting the presumption of control requirements at § 3400.0-5(rr) of this title, if the entity's instruments of ownership of the voting securities of another entity or of its voting

securities by another entity are 20 through 50 percent. The authorized officer, based on the written self-certification statement and other relevant information, shall determine whether the entity has rebutted the presumption of control.

(ii) If a lease is issued, or a transfer approved under subpart 3453 of this title, to an entity based upon an improper, written self-certification of compliance, the authorized officer shall administratively cancel the lease, or rescind the approved transfer, after complying with § 3452.2-2 of this title.

(3) The authorized officer may require an entity holding or seeking to hold an interest in a lease, to furnish, at any time, further evidence of compliance with the special leasing qualifications of this subpart.

(4)(i) An entity, seeking to qualify for lease issuance, or transfer approval under subpart 3453 of this title, shall not be disqualified under the provisions of this subpart if it has one of the following actions pending before the authorized officer for any lease that would otherwise disqualify it under this subpart:

(A) Request for lease relinquishment; or

(B) Application for arm's-length lease assignment; or

(C) Application for approval of a logical mining unit that the authorized officer determines would be producing on its effective date.

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by the authorized officer on the pending action, or the withdrawal of the pending action by the applicant, shall result in termination of the lease or recision of the transfer approval. Such decision of the authorized officer shall be effective, regardless of appeal of that decision. The possibility of lease termination shall be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity shall not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section during the pendency of an appeal before the Office of Hearings and Appeals from an adverse decision by the authorized officer on any of the actions described in paragraph (e)(4)(i) of this section.

(iv)(A) Where an entity, qualified under this section, had an approved transfer of a lease under subpart 3453 of this title, the transferor retained a right-of-first-refusal, and the entity wishes to relinquish such lease if such lease would otherwise disqualify the entity under this subpart, the entity may file the relinquishment under subpart 3452 of this title. However, the entity shall:

(*1*) Submit sufficient documentation for the authorized officer to determine that, in fact, such a right-of-first-refusal exists and prevents approval or disapproval by the authorized officer of the pending relinquishment;

(*2*) Submit with the request for approval of the relinquishment a statement that action by the authorized officer on the pending relinquishment be conditioned on the execution, or lack thereof, of the assignment under the right-of-first-refusal, as well as on the approval or disapproval of the assignment, if executed, under subpart 3453 of this title;

(*3*) Submit an application for arm's-length lease assignment signed by the entity as well as proof that it has been submitted to the transferor that retained the right-of-first-refusal (e.g., copy of certified mail delivery); and

(*4*) Submit the name(s) and address(es) of the transferor(s) that retained the right-of-first-refusal.

(B) If the authorized officer determines, based on the information supplied under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal prevents action on the pending relinquishment, the authorized officer will send, via certified mail, return receipt requested, a request for additional information to the transferor that retained the right-of-first-refusal. The request shall state that the transferor that retained the right-of-first-refusal shall comply with subpart 3453 of this title within 30 days of receipt. If the transferor that retained the right-of-first-refusal does not comply within the 30-day time frame, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(C) If the authorized officer determines, pursuant to the information submitted under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal does not prevent action on the request for relinquishment, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(5) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity under the provisions of this subpart.

(6)(i) The authorized officer shall determine the date of first production for the purposes of establishing the beginning of the bracket, if applicable.

(ii) An entity shall not be disqualified under the provisions of this subpart if each lease that the entity holds is:

(A) Producing and is within its bracket;

(B) Producing and has produced commercial quantities during the bracket.

(C) Producing and has achieved production in commercial quantities (an entity holding such a lease is disqualified under section 2(a)(2)(A) of the Act from the end of the bracket until production in commercial quantities is achieved), for leases which fail to produce commercial quantities within the bracket;

(D) Producing, or currently in compliance with the continued operation requirements of part 3480 of this chapter, for leases that began their first production of coal—

(*1*) On or after August 4, 1976; and

(*2*) After becoming subject to the diligence provisions of part 3480 of this chapter;

(E) Contained in an approved logical mining unit that is:

(*1*) Producing or currently in compliance with the LMU continued operation requirements or part 3480 of this chapter; and

(*2*) In compliance with the logical mining unit stipulations of approval under § 3487.1(e) and (f) of this chapter; or

(F) Relieved of a producing obligation pursuant to paragraph (e) (1), (4), or (5) of this section.

(f) In order to qualify for a lease on acquired lands set apart for military and naval purposes, a governmental entity shall show that it produces electrical energy for sale to the public and that it is located in the state where the lands subject to the application or bid are located.

(g) Any applicant for a lease for lands in which the United States has a future interest shall submit documentation that he or she holds, in fee or by lease, the present interest in the coal deposit subject to the application.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979, and amended at 47 FR 33150, July 30, 1982; 51 FR 43922, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987; 62 FR 44370, Aug. 20, 1997]

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§ 3472.1-3 Acreage limitations.

(a)(1) No person, association, or corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation shall take, hold, own, or control at one time Federal coal leases, lease or lease modification applications, or bids on more than 75,000 acres in any one state and in no case on more than 150,000 acres in the United States.

(2) No person, association, or corporation holding, owning, or controlling leases, lease or lease modification applications or bids (individually or through any subsidiary, affiliate, or person under common control) on more than 150,000 acres in the United States on November 7, 2000, shall be required to relinquish any lease or lease application held on that date. However, it shall not be permitted to hold any additional interests in any further leases or lease applications until such time as its holdings, ownership, or control of leases or applications has been reduced below 150,000 acres within the United States.

(b)(1) In computing acreage held, owned or controlled, the accountable acreage of a party holding, owning or controlling an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. Any subsidiary, affiliate or person controlled by or under common control with any corporation, person or association holding, owning or controlling a Federal coal lease shall be charged with lease acreage to the same extent as such corporation, person or association. The accountable acreage of a party holding, owning or controlling an interest in a corporation or association shall be that party's proportionate part of the acreage held, owned or controlled by such corporation or association. However, no party shall be charged with its pro rata share of any acreage held, owned or controlled by any corporation or association unless that party is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such corporation or association.

(2) On acquired lands, if the United States owns only a fractional interest in the coal resources of the lands involved, only that part of the total acreage involved in the lease, proportionate to the extent of ownership by the United States of the coal resources, shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979, and amended at 47 FR 33150, July 30, 1982; 67 FR 63567, Oct. 15, 2002]

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§ 3472.2 Filing of qualification statements.

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§ 3472.2-1 Sole party in interest statement.

Every applicant or bidder for a lease or license to mine shall submit to the Bureau of Land Management State Office having jurisdiction over the lands in the application or subject to the bid (43 CFR subpart 1821) at the time of filing the application or bid a signed statement that the applicant is the sole party in interest in the application or bid, and the lease or license to mine, if issued. If the applicant or bidder is or will not be the sole party in interest, the applicant or bidder shall set forth the names of the other interested parties in the application or bid. A separate or joint statement shall be signed by them and by the applicant or bidder setting forth the nature and extent of the interest of each in the application or bid, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, shall accompany the application or bid. All interested parties shall furnish evidence of their qualifications to hold such interest in the lease or license to mine including a statement regarding knowledge of written consent from any qualified surface owner for the area involved (43 CFR subpart 3427).

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§ 3472.2-2 Contents of qualification statement.

(a) If the applicant or bidder is an individual, he shall submit a signed statement setting forth his citizenship with each application or bid for a license to mine or lease.

(b) If the applicant or bidder is an association or partnership, the application or bid shall be accompanied by a certified copy of the articles of association or partnership, together with a statement showing (1) that the association or partnership is authorized to hold a lease or license to mine; (2) that the member or partner executing the lease or license to mine is authorized to act on behalf of the association or partnership in such matters; (3) the names and addresses of all members owning or controlling more than 10 percent of the association or partnership and their citizenship and holdings.

(c) If the applicant or bidder for a lease or license to mine is a corporation, it shall submit statements showing:

(1) The state of incorporation;

(2) That the corporation is authorized to hold leases or licenses to mine;

(3) The names of the officers authorized to act on behalf of the corporation;

(4) The percentage of the corporation's voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and

(5) The name, address, citizenship and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Applications on behalf of a corporation executed by other than an officer named under paragraph (c)(3) of this section shall be accompanied by proof of the signatory's authority to execute the instrument. The applicant shall submit the same information as is required in the preceding paragraph for any of its corporate stockholders holding, owning or controlling 10 percent or more of its stock of any class.

(d) To qualify as a small business for the purpose of bidding on any tract to be offered as part of a special opportunity lease sale for small businesses, the bidder shall submit evidence demonstrating qualification under 13 CFR part 121.

(e) Where there is a legal guardian or trustee, the following shall be provided:

(1) A copy of the court order or other document authorizing the guardian or trustee to act as such and to fulfill in behalf of the ward or beneficiary all obligations of the lease or other obligations arising thereunder; the person submitting any such document shall in some manner indicate its authenticity;

(2) A statement by the guardian or trustee as to his or her citizenship and holdings (of acreage in Federal coal leases) in any capacity; i.e., individually and for the benefit of any person; and

(3) A statement by each ward and beneficiary as to his or her citizenship and holdings; if the ward or beneficiary is a minor, the statement shall be executed for the minor by the guardian or trustee, as appropriate.

(f) The Department reserves the right to request any supplementary information that is needed to accredit acreage under § 3472.1-3 of this title.

(g) Any applicant or bidder who has previously filed a qualification statement may, if it certifies that the prior statement remains complete, current and accurate, submit a serial number reference to the record and office where the prior statement is filed.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

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§ 3472.2-3 Signature of applicant.

(a) Every application or bid for a lease or license to mine shall be signed by the applicant or bidder or by its attorney-in-fact. If executed by an attorney-in-fact the application or bid shall be accompanied by the power of attorney and the applicant's own statement as to citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-

in-fact to make such statement or to execute all statements which may be required under these regulations.

(b) If the application or bid is signed by an attorney-in-fact or agent, it shall be accompanied by:

(1) A statement over the signature of the attorney-in-fact or agent; and

(2) A separate statement personally signed by the applicant or bidder stating whether there is any agreement or undertaking, written or oral, whereby the attorney-in-fact or agent has or is to receive any interest in the lease, if issued.

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§ 3472.2-4 Special qualifications heirs and devisees (estates).

(a) If an applicant or bidder for a license to mine or a lease dies before the license to mine or lease is issued, the license or lease shall be issued: If the estate has not been probated, to the executor or administrator of the estate; if probate has been completed, or is not required, to the heirs or devisees; and if their are minor heirs or devisees, to their legal guardian or trustee.

(b) The lease or license to mine shall not issue until the following information has been filed:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who acts as executor or administrator has the authority to act in that capacity and to act on the application or bid;

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or bidder, and are the only heirs or devisees of the deceased; and

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings.

(2) Where the executor or administrator has been discharged or no probate proceedings are required: (i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or bidder, and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and (ii) a statement over the signature of each of the heirs or devisees with reference to citizenship and holdings, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

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§ 3472.2-5 Special qualifications, public bodies.

(a) To qualify to bid for a lease on a tract offered for sale under § 3420.1-3 of this title, a public body shall submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease;

(3) A definite plan as described in § 3420.1-3(b) to produce energy within 10 years of issuance of the prospective lease solely for its own use or for sale to its members or customers (except for short-term sales to others); and

(4) Evidence that the definite plan has been duly authorized by its governing body.

(b) To obtain a license to mine, a municipality shall submit with its application:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license to mine; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To qualify to bid for a lease on a tract of acquired land set apart for military or naval purposes, a governmental entity shall submit:

(1) Evidence of the manner in which it is organized, including the State in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its own governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased are located.

(d) If the material required in paragraphs (a), (b), or (c) of this section has previously been filed, a reference to the serial number of the record in which it has been filed, together with a statement as to any amendments, shall be accepted.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

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Subpart 3473—Fees, Rentals, and Royalties

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§ 3473.1 Payments.

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§ 3473.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

[49 FR 11638, Mar. 27, 1984]

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§ 3473.1-2 Where submitted.

(a)(1) All first-year rentals and the first-year portions of all bonuses for leases issued under Group 3400 of this title shall be paid to the Bureau of Land Management State office having jurisdiction over the lands (43 CFR subpart 1821).

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases shall be paid to the Service.

(b) All royalties on producing leases, all payments under leases in their minimum production period, and all advance royalties shall be paid to the Service.

[49 FR 11638, Mar. 27, 1984, as amended at 49 FR 39330, Oct. 5, 1984]

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§ 3473.1-3 When paid.

First year's rental for preference right leases shall be remitted at the time of filing the applications. First year's rental for competitive leases shall be payable when required by decision. Thereafter, rental for all leases shall be paid in accordance with the lease provisions.

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§ 3473.2 Fees.

(a) An application for a license to mine must include payment of the filing fee found in the fee schedule in § 3000.12 of this chapter. BLM may waive the filing fee for applications filed by relief agencies as provided in § 3440.1-1(b) of this chapter.

(b) An application for an exploration license must include payment of the filing fee found in the fee schedule in § 3000.12 of this chapter.

(c) An instrument of transfer of a lease or an interest in a lease must include payment of the filing fee found in the fee schedule in § 3000.12 of this chapter.

(d) BLM will charge applicants for a royalty rate reduction a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

(e) BLM will charge applicants for logical mining unit formation or modification a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

(f) The applicant who nominates a tract for a competitive lease sale must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by the provisions below. BLM will include in the sale notice under § 3422.2(b)(9) of this chapter a statement of the total cost recovery fee paid to BLM by the applicant up to 30 days before the competitive lease sale. The cost recovery process for a competitive coal lease follows:

(1) The applicant nominating the tract for competitive leasing must pay the cost recovery amount before BLM will publish a notice of the competitive lease sale;

(2) Before the lease is issued:

(i) The successful bidder, if someone other than the applicant, must pay to BLM the cost recovery amount specified in the sale notice; and

(ii) The successful bidder must pay all processing costs BLM incurs after the date of the sale notice;

(3) If the successful bidder is someone other than the applicant, BLM will refund to the applicant the amount paid under paragraph (f)(1) of this section; and

(4) If there is no successful bidder, the applicant remains responsible for all processing fees.

(g) BLM will charge applicants for modification of a coal lease a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

[70 FR 58876, Oct. 7, 2005]

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§ 3473.3 Rentals and royalties.

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§ 3473.3-1 Rentals.

(a) The annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than $3. The amount of the rental will be specified in the lease.

(b) Until a lease issued before August 4, 1976, is readjusted, the rental paid for any year shall be credited against the royalties for that year.

(c) On leases issued or readjusted after August 4, 1976, rental payments shall not be credited against royalties.

(d) Rentals paid for any lease year commencing prior to the effective date of the first lease readjustment occurring after August 4, 1976, shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of the readjustment shall not be credited against royalties.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

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§ 3473.3-2 Royalties.

(a)(1) A lease shall require payment of a royalty of not less than 12½ percent of the value of the coal removed from a surface mine.

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

(3) The value of coal removed from a mine is defined for royalty purposes in § 3483.4 of this title.

(b) The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease.

(c) The authorized officer shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year in accordance with § 3485.2 of this title.

(d) An overriding royalty interest, production payment or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that precentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in a Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he/she shows that he/she has made substantial investments for improvements directly related to exploration, development and mining on the lands covered by the transfer that would justify a higher payment.

(e) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the authorized officer in accordance with part 3480 of this title.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982; 50 FR 8627, Mar. 4, 1985; 55 FR 2664, Jan. 26, 1990]

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§ 3473.4 Suspension of operations, production, and payment obligations.

(a) Application by a lessee for relief from any operating and producing requirements of a lease; shall be filed in triplicate in the office of the Mining Supervisor in accordance with 43 CFR part 3480.

(b) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term in accordance with any direction or assent of the Mining Supervisor.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982]

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Subpart 3474—Bonds

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§ 3474.1 Bonding requirements.

(a) Before a lease may be issued, one of the following forms of lease bond shall be furnished:

(1) Corporate surety bonds;

(2) Cash bond; or

(3) Personal lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney executed on a form approved by the Director.

(b) The applicant or bidder shall file the lease bond in the proper office within 30 days of receiving notice. The lease bond shall be furnished on a form approved by the Director.

(c) The bonding obligation for a new lease may be met by an adjustment to an existing LMU bond covering the other leases within the same LMU.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982]

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§ 3474.2 Type of bond required.

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, shall be furnished in the amount determined by the authorized officer. Except as provided in § 3474.3(b) of this title, that bond shall not cover reclamation within a permit area.

(b) For exploration licenses, a bond shall be furnished in accordance with § 3410.3-4 of this title.

(c)(1) Upon approval of an LMU including more than 1 Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain an LMU bond covering all of the terms and conditions of every Federal lease within the LMU, except for reclamation within the mining permit area unless the condition in § 3474.3(b) of this title applies. All LMU bonds shall be furnished in the amount recommended by the Mining Supervisor.

(2) When an LMU is terminated, the LMU bond shall terminate. Individual leases remaining from the LMU shall be covered by lease bonds in the manner prescribed by the Mining Supervisor.

[44 FR 56340, Oct. 1, 1979, as amended at 47 FR 33151, July 30, 1982]

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§ 3474.3 Bond conversions.

(a) The authorized officer shall notify those leaseholders who have nationwide or statewide bonds at the time of issuance of this subpart of the requirement to secure a separate lease bond for each lease in the amount determined by the authorized officer to be proper and necessary.

(b)(1) In setting or adjusting individual lease bond amounts, the authorized officer shall assure that the lease bond covers reclamation within a permit area where the Surface Mining Officer, because of the absence of a cooperative agreement governing Federal lands within that state, notifies the authorized officer that the lease bond should cover that reclamation.

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

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982]

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§ 3474.4 Qualified sureties.

A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-14) as acceptable sureties on Federal bonds is published annually in the FEDERAL REGISTER.

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§ 3474.5 Default.

When the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

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§ 3474.6 Termination of the period of liability.

The authorized officer shall not consent to termination of the period of liability under the lease bond unless an acceptable substitute bond has been filed or until all terms and conditions of the lease have been fulfilled.

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Subpart 3475—Lease Terms

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§ 3475.1 Lease form.

Leases shall be issued on a standard form approved by the Director. The authorized officer may modify those provisions of the standard form which are not required by statute or regulations and may add such additional stipulations and conditions as he/she deems appropriate.

[47 FR 33151, July 30, 1982]

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§ 3475.2 Duration of leases.

Leases shall be issued for a period of 20 years and so long thereafter as the condition of continued operation is met. If the condition of continued operation is not met the lease shall be cancelled as provided in § 3452.2 of this title.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33151, July 30, 1982]

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§ 3475.3 Dating of leases.

(a) Leases will be dated and made effective the first day of the month following the date signed by the authorized officer. However, upon receipt of a prior written request, the authorized officer may date a lease to be effective on the first day of the month in which it is signed.

(b) Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33151, July 30, 1982]

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§ 3475.4 Land description.

Compliance with § 3471.1 of this title is required.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33151, July 30, 1982]

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§ 3475.5 Diligent development and continued operation.

In accordance with part 3480 of this title, each lease shall require:

(a) Diligent development; and

(b) Either (1) continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee, or (2) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advanced royalty.

[47 FR 33151, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

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§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied in accordance with § 3487.1 of this title.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

[47 FR 33151, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

Contents

NOTE1: The information collection requirements contained in 43 CFR part 3480 which require the filing of forms have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. The Coal Production and Royalty Report form in 30 CFR 211.62(d)(1), U.S. Geological Survey Form 9-373A, has been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028-0001.

The information is being collected for Federal royalty accounting purposes. The information will be used to permit accounting and auditing of royalties submitted by the operators/lessees of Federal coal leases. The obligation to respond is mandatory for all operators/lessees of Federal coal leases. For nonproducing Federal leases, the report is required on an annual basis. For producing Federal leases, the report is required monthly or quarterly as specified in the Federal lease.

The information collection requirements contained at §§ 3481.1, 3481.2, 3482.2, 3482.3, 3483.3, 3483.4, 3485.1, 3485.2, 3486.3 and 3487.1 of this title have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028-0042. The information may be collected from some operators/lessees to either provide data so that proposed operations may be approved or to enable the monitoring of compliance with approvals already granted. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain the benefit under the Federal lease.

NOTE 2: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal coal leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 211 or specific sections thereof. Those references shall now be read to refer to 43 CFR part 3480 or to the appropriate redesignated section thereof.

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

SOURCE: 47 FR 33179, July 30, 1982, unless otherwise noted. Redesignated at 48 FR 41589, Sept. 16, 1983.

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Subpart 3480—Coal Exploration and Mining Operations Rules: General

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§ 3480.0-1 Purpose.

The purposes of the rules of this part are to ensure orderly and efficient development, mining, preparation, and handling operations for Federal coal; ensure production practices that prevent wasting or loss of coal or other resources; avoid unnecessary damage to coal-bearing or mineral-bearing formations; ensure MER of Federal coal; ensure that operations meet

requirements for diligent development and continued operation; ensure resource recovery and protection plans are submitted and approved in compliance with MLA; ensure effective and reasonable regulation of surface and underground coal mining operations; require an accurate record and accounting of all coal produced; ensure efficient, environmentally sound exploration and mining operations; and eliminate duplication of efforts by the Minerals Management Service (MMS), OSM, and the States in the Federal coal program.

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§ 3480.0-4 Scope.

The rules of this part shall govern operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (MLA), and in conjunction with the rules at 43 CFR Group 3400 and 30 CFR Chapter VII. Included are provisions relating to resource recovery and protection, royalties, diligent development, continued operation, maximum economic recovery (MER), and logical mining units (LMU's). Except as otherwise provided in 25 CFR Chapter I or Indian lands leases, these rules do not apply to operations on Indian lands. The provisions in these rules relating to advance royalty, diligent development, continued operation, MER, and LMU's shall not apply to Indian lands, leases and permits. The rules governing exploration licenses for unleased Federal coal are codified at 43 CFR part 3410. Until final rulemaking is promulgated and implemented by the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the initial Federal lands Programs, the initial Federal lands Program rules codified at 30 CFR part 211 (1981) shall remain in effect.

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§ 3480.0-5 Definitions.

(a) As used in the rules of this part, the following terms shall have the following meanings:

(1) *Advance royalty* means a payment under a Federal lease in advance of actual production when authorized by the authorized officer to be made in lieu of continued operation. Payments made under the minimum production clause, in lieu of actual production from a Federal lease issued prior to August 4, 1976, and not readjusted after August 4, 1976, are not advance royalty under the provisions at 43 CFR 3483.4

(2) *Assistant Director for Solid Leasable Minerals* means Assistant Director for Solid Leasable Minerals, Bureau of Land Management;

(3) *Assistant Secretary for Land and Water Resources* means the Assistant Secretary for Land and Water Resources, Department of the Interior;

(4) *Chief, Division of Solid Mineral Operations* means the Chief, Division of Solid Minerals Operations, Bureau of Land Management;

(5) *Coal reserve base* shall be determined using existing published or unpublished information, or any combination thereof, and means the estimated tons of Federal coal in place contained in beds of:

(i) Metallurgical or metallurgical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60

inches or more thick to a depth of 500 feet below the lowest surface elevation on the Federal lease.

(ii) Metallurgical and metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick occurring from 500 to 3,000 feet below the lowest surface elevation on the Federal lease.

(iii) Any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet below the lowest suface elevation on the Federal lease, which is currently being mined or for which there is evidence that such coal bed could be mined commercially at this time.

(iv) Any coal at a depth greater than 3,000 feet where mining actually is to occur.

(6) *Commercial quantities* means 1 percent of the recoverable coal reserves or LMU recoverable coal reserves.

(7) *Contiguous* means having at least one point in common, including cornering tracts. Intervening physical separations such as burn or outcrop lines and intervening legal separations such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common.

(8) *Continued operation* means the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

(9) *Continued operation year* means the 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter, except as suspended in accordance with 43 FR 3483.3(b).

(10) *Deputy Director for Energy and Mineral Resources* means the Deputy Director for Energy and Mineral Resources, Bureau of Land Management;

(11) *Development* means activities conducted by an operator/lessee, after approval of a permit application package, to prepare a mine for commercial production.

(12) *Diligent development* means the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period.

(13) *Diligent development period* means a 10-year period which:

(i) For Federal leases shall begin on either—

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

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

(ii) For LMU's shall begin on either—

(A) The effective approval date of the LMU, if the LMU contains a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval; or

(B) The effective date of the most recent Federal lease issuance or readjustment prior to LMU approval, for any LMU that does not contain a lease issued prior to August 4, 1976, that has not been readjusted after August 4, 1976, prior to LMU approval.

The diligent development period shall terminate at the end of the royalty reporting period in which the production of recoverable coal reserves in commercial quantities was achieved, or at the end of 10 years, whichever occurs first.

(14) *Exploration* means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal coal and its environment including the strata below the Federal coal, overburden, and strata above the Federal coal, and the hydrologic conditions associated with the Federal coal.

(15) *Exploration plan* means a detailed plan to conduct exploration; it shows the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(16) *General mining order* means any numbered formal order, issued by the State Director, which is published in the FEDERAL REGISTER after opportunity for public comment. General Mining Orders apply to coal exploration, mining, and related operations.

(17) *Gross value,* for the purpose of royalty calculations, means the unit sale or contract price times the number of units sold, subject to the provisions at § 3485.2(g) of this title under which gross value is determined.

(18) *License* means a license to mine coal pursuant to the provisions of 43 CFR part 3440, or an exploration license issued pursuant to the provisions of 43 CFR part 3410.

(19) *Logical mining unit (LMU)* means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable coal reserves and other resources. An LMU may consist of one or more Federal leases and may include intervening or adjacent lands in which the United States does not own the coal. All lands in an LMU shall be under the effective control of a single operator/lessee, be able to be developed and operated as a single operation, and be contiguous.

(20) *Logical mining unit (LMU) recoverable coal reserves* means the sum of estimated Federal and non-Federal recoverable coal reserves in the LMU.

(21) *Maximum economic recovery (MER)* means that, based on standard industry operating practices, all profitable portions of a leased Federal coal deposit must be mined. At the times of MER determinations, consideration will be given to: existing proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; safety, exploration, operating, processing, and transportation costs; and compliance with applicable laws and regulations. The requirement of MER does not restrict the authority of the authorized officer to ensure the conservation of the recoverable coal reserves and other resources and to prevent the wasting of coal.

(22) *Methods of operation* means the methods and manner, described in an exploration or resource recovery and protection plan, by which exploration, development, or mining activities are to be performed by the operator/lessee.

(23) *Minable reserve base* means that portion of the coal reserve base which is commercially minable and includes all coal that will be left, such as in pillars, fenders, or property barriers. Other areas where mining is not permissible (including, but not limited to, areas classified as unsuitable for coal mining operations) shall be excluded from the minable reserve base.

(24) *Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

(25) *MLA* means the Act of February 25, 1920, as amended, commonly referred to as the Mineral Leasing Act and codified at 30 U.S.C. 181, *et seq.,* and the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351-359.

(26) *Notice of availability* means formal notification by the authorized officer to: appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public in accordance with 43 CFR 3481.2.

(27) *Operator/lessee* means lessee, licensee, and/or one conducting operations on a Federal lease or license under a written contract or written agreement with the lessee or licensee.

(28) *Permanent abandonment of exploration operations* means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes, submission of required records, and reclamation of all disturbed surfaces.

(29) *Permanent abandonment of mining operations* means the completion of all development, production, and resource recovery and protection requirements conducted under an approved resource recovery and protection plan, including satisfaction of all Federal rental and royalty requirements.

(30) *Preparation* means any physical or chemical treatment to prepare coal for market. Treatment may include crushing, sizing, drying, mixing, or other processing, and removal of noncoal waste such as bone or other impurities to enhance the quality and therefore the value of the coal.

(31) *Production* means mining of recoverable coal reserves and/or commercial byproducts from a mine using surface, underground, auger, or *in situ* methods.

(32) *Recoverable coal reserves* means the minable reserve base excluding all coal that will be left, such as in pillars, fenders, and property barriers.

(33) *Resource recovery and protection* includes practices to: recover efficiently the recoverable coal reserves subject to these rules; avoid wasting or loss of coal or other resources; prevent damage to or degradation of coal-bearing or mineral-bearing formations; ensure MER of the Federal coal; and ensure that other resources are protected during exploration, development, and mining, and upon abandonment.

(34) *Resource recovery and protection plan* means a plan showing that the proposed operation meets the requirements of MLA for development, production, resource recovery and

protection, diligent development, continued operation, MER, and the rules of this part for the life-of-the-mine.

(35) *State Director* means an employee of the Bureau of Land Management who has been designated as the chief administrative officer of one of the Bureau's 12 administrative areas designated as “States”.

(36) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent settling or caving of strata lying above the mine.

(b) The following shall have the meanings as defined at 30 CFR Chapter VII:

Alluvial valley floors

Federal Lands Program

Ground water

Indian lands

Overburden

Permit

Permit application

Permit application package

Permit area

Regulatory authority

Roads

Spoil

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

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§ 3480.0-6 Responsibilities.

(a) *Responsibilities of other Federal Agencies* —(1) *Office of Surface Mining Reclamation and Enforcement.* The responsibility for administration of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201, *et seq.*) is vested in OSM.

(2) *Mine Safety and Health Administration.* The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 742), and the coal mine health and safety rules contained in Chapter I of this title are vested in the Mine Safety and Health Administration, Department of Labor.

(3) *Bureau of Land Management.* The responsibility for the issuance of exploration licenses for unleased Federal coal, the issuance of licenses to mine, and the issuance, readjustment, modification, termination, cancellation, and/or approval of transfers of Federal coal leases pursuant to MLA, as amended, is vested in the Bureau of Land Management.

(b) The BLM has the general responsibility to administer MLA with respect to coal mining, production, and resource recovery and protection operations on Federal coal leases and licenses, and to supervise exploration operations for Federal coal.

(c) Subject to the supervisory authority of the Secretary, the rules of this part shall be administered by BLM through the Director; Deputy Director for Energy and Mineral Resources; Chief, Division of Solid Mineral Operations; State Director and authorized officer.

(d) The authorized officer is empowered to oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, product verification, and abandonment operations subject to the rules of this part, and shall be responsible for the following:

(1) *Exploration plans.* Approve, disapprove, approve upon condition(s), or require modification to exploration plans for Federal coal.

(2) *Resource recovery and protection plans.* Recommend to the Assistant Secretary for Energy and Minerals the approval, disapproval, or approval upon condition(s) of resource recovery and protection plans.

(3) *LMU applications.* Approve, disapprove, or approve upon condition(s) LMU applications or modifications thereto; direct the establishment of LMU's in the interest of conservation of recoverable coal reserves and other resources; conduct public hearings on LMU applications, as appropriate, recommend amendments to Federal lease terms when determined necessary to ensure consistency with LMU stipulations; monitor and ensure compliance with LMU stipulations and the rules of this part; and require reports and information for the establishment of an LMU.

(4) *Inspection of operations.* Examine as frequently as necessary, but at least quarterly, federally leased or licensed lands where operations for exploration, development, production, preparation, and handling of coal are conducted or are to be conducted; inspect such operations for product verification, resource recovery and protection, MER, diligent development and continued operation; inspect such operations for the purpose of determining whether wasting or degradation of other resources or damage to formations and deposits or nonmineral resources affected by the operations is being avoided or minimized; and determine whether there is compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses, and all requirements of approved exploration or resource recovery and protection plans.

(5) *Compliance.* Require operators/lessees to conduct operations subject to the rules of this part in compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses under MLA requirements, and approved exploration or resource recovery and protection plans for requirements of production, development, resource recovery and protection, MER, diligent development and continued operation upon commencement of production.

(6) *Waiver, suspension, or reduction of rentals, or reduction of royalties.* Receive and act on applications for waiver, suspension, or reduction of rentals, and receive and act on applications for reduction of royalties, but not advance royalty, filed pursuant to the rules of this part.

(7) *Extensions or suspensions.* Receive and act on applications for extensions or suspensions filed in accordance with 43 CFR 3483.2 and, when appropriate, terminate extensions or suspensions that have been granted, provided that approval of an extension or a suspension shall not preclude the regulatory authority from requiring the operator/lessee to

continue to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(8) *Cessation and abandonment.* Upon receipt of notice of proposed abandonment or upon relinquishment of a Federal lease, in accordance with 43 CFR 3452.1-2, or Federal license, in accordance with 43 CFR 3410.3-1(d), the authorized officer shall conduct an inspection to determine whether the applicable exploration, development, production, resource recovery and protection, and abandonment requirements of the Federal lease or license have been met. Relinquishment or abandonment of a Federal lease shall not preclude the regulatory authority from requiring the operator/lessee to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(9) *Exploration drill holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might occur as a result of any holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(10) *Trespass.* Report to the responsible officer of the surface managing agency, with a copy to the regulatory authority, any trespass on Federal lands that involves exploration activities or removal of unleased Federal coal, determine the quantity and quality of coal removed, and recommend the amount of trespass damages.

(11) *Water and air quality.* Inspect exploration operations to determine compliance with air and surface and ground water pollution control measures required by Federal statutes as implemented by the terms and conditions of applicable Federal leases, licenses or approved exploration plans, and promptly notify appropriate representatives of the regulatory authority and Federal Agencies in the event of any noncompliance.

(12) *Implementation of rules.* Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or ensure compliance with the rules of this part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(13) *Lease bonds.* (i) Determine whether the total amount of Federal lease bond with respect to operations under the rules of this part is adequate at all times to satisfy the reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to the rules of this part is at all times adequate to satisfy the requirements of the Federal lease or license relating to exploration, development, production, resource recovery and protection, and shall determine if the bond amount is adequate to satisfy any payments of rentals on producing Federal leases and payments of Federal royalties.

(iii) Notify the responsible officer of the surface managing agency of determinations under (c)(13) (i) and (ii) of this section.

[47 FR 33179, July 30, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

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Subpart 3481—General Provisions

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§ 3481.1 General obligations of the operator/lessee.

(a) The operator/lessee shall conduct exploration activities, reclamation, and abandonment of exploration operations for Federal coal pursuant to the performance standards of the rules of this part, applicable requirements of 30 CFR 815.15 (OSM permanent performance standards for coal exploration) or an approved State program, any Federal lease or license terms and/or conditions, the requirements of the approved exploration plan, and orders issued by the authorized officer.

(b) The operator/lessee shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules of this part, terms and conditions of the Federal leases or licenses, the approved resource recovery and protection plan, and any orders issued by the authorized officer.

(c) The operator/lessee shall prevent wasting of coal and other resources during exploration, development, and production and shall adequately protect the recoverable coal reserves and other resources upon abandonment.

(d) The operator/lessee shall immediately report to the authorized officer any conditions or accidents causing severe injury or loss of life that could affect mining operations conducted under the resource recovery and protection plan or threaten significant loss of recoverable coal reserves or damage to the mine, the lands, or other resources, including, but not limited to, fires, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts, including corrective action initiated or recommended. Within 30 days after such accident, the operator/lessee shall submit a detailed report of damage caused by such accident and of the corrective action taken.

(e) The principal point of contact for the operator/lessee with respect to any requirement of the rules of this part shall be the authorized officer. All reports, plans, or other information required by the rules of this part shall be submitted to the authorized officer.

(f) The operator/lessee shall provide the authorized officer free access to the Federal premises.

[47 FR 33179, July 30, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

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§ 3481.2 Procedures and public participation.

(a) *Written findings.* All major decisions and determinations of the State Director and District Manager shall be in writing; shall set forth with reasonable detail the facts and rationale upon which such decisions or determinations are based; and shall be available for public inspection, pursuant to § 3481.3 of this title, during normal business hours at the appropriate office.

(b) *Logical mining units (LMU's)* —(1) *Availability of LMU proposals.* Applications for the approval of an LMU or modification thereto submitted under § 3487.1 of this title, or a proposal by the authorized officer to establish an LMU, shall be available for public inspection, pursuant to § 3481.3 of this title, in the office of the authorized officer. A notice of the availability of any proposed LMU or modification thereto shall be prepared immediately by the authorized officer, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; appropriate State and Federal Agencies; and the clerk or other appropriate officer of the

county in which the proposed LMU is located. The notice will be posted or published in accordance with the procedures of such offices. The notice shall be submitted by the authorized officer to a local newspaper of general circulation in the locality of the proposed LMU for publication at least once a week for 2 weeks consecutively.

(2) *Notice of proposed decision.* Prior to the final approval or establishment of any LMU, the authorized officer shall have the proposed decision published in a local newspaper of general circulation in the locality of the proposed LMU at least once a week for 2 weeks consecutively and shall not approve the application for at least 30 days after the first publication of the proposed decision. Such notice may be published concurrently with the notice of availability.

(3) *Public participation.* A public hearing shall be conducted upon the receipt by the authorized officer of a written request for a hearing from any person having a direct interest which is or may be affected adversely by approval of the proposed LMU, provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation in the locality of the proposed LMU. A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of the authorized officer that held the hearing, and shall be furnished at cost to any interested party. In making any decision or taking any action subsequent to such public hearing, the authorized officer shall take into account all testimony presented at the public hearing.

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§ 3481.3 Confidentiality.

(a) Information on file with MMS obtained pursuant to the rules of this part or part 3400 of this title shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal recoverable coal reserves obtained from exploration licensees under the rules of this part or part 3410 of this title shall not be disclosed except as provided in 43 CFR 2.20(c).

(2) Information obtained from an operator/lessee under the rules of this part that constitutes trade secrets and commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the operator/lessee.

(3) Upon termination of a Federal lease, such geologic and geophysical data and maps shall be made available to the public.

(4) Upon issuance or readjustment of a Federal lease, the estimated Federal recoverable coal reserves figure shall not be made available to the public unless such a release has been included as a Federal lease term.

(b) Information requested by the operator/lessee to be kept confidential under this section shall be clearly marked “CONFIDENTIAL INFORMATION.” All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked “CONFIDENTIAL INFORMATION” will be available for public inspection, except as stated at paragraph (a) of this section for data submitted prior to August 30, 1982.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

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§ 3481.4 Temporary interruption in coal severance.

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§ 3481.4-1 Can I temporarily interrupt coal severance and still be qualified as producing?

Yes, a temporary interruption in coal severance allows you (the lessee/operator) to halt the extraction of coal for a limited period of time without jeopardizing your qualifications under section (2)(a)(2)(A) of MLA to receive additional leases. During the period of a temporary interruption in coal severance, BLM still considers you lease or LMU to be producing so as not to preclude you from receiving a new or transferred lease.

[62 FR 44370, Aug. 20, 1997]

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§ 3481.4-2 What are some examples of circumstances that qualify for a temporary interruption of coal severance?

(a) Movement, failure, or repair of major equipment, such as draglines or longwalls; overburden removal; adverse weather; employee absences;

(b) Inability to sever coal due to orders issued by governmental authorities for cessation or relocation of the coal severance operations; and

(c) Inability to sell or distribute coal severed from the lease or LMU out of or away from the lease or LMU.

[62 FR 44370, Aug. 20, 1997]

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§ 3481.4-3 Does a temporary interruption in coal severance affect the diligence requirements applicable to my lease or LMU?

No, a temporary interruption in coal severance covered by §§ 3481.4-1 to 3481.4-4 does not change the diligence requirements of subpart 3483 applicable to your lease or LMU.

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§ 3481.4-4 What is the aggregate amount of time I can temporarily interrupt coal severance and have BLM consider my lease or LMU producing?

(a) If you (the lessee/operator) want BLM to consider your lease or LMU to be producing, the aggregate of all temporary interruptions in coal severance from your lease or LMU must not

exceed 1 year in the 5-consecutive-year period immediately preceding the date of BLM's determination of lessee qualifications under § 3472.1-2 of this chapter.

(b) BLM will not count toward the aggregate interruption limit described in paragraph (a) of this section:

(1) Any interruption in coal severance that is 14 days or less in duration;

(2) Any suspension granted under § 3483.3 of this part; and

(3) Any BLM-approved suspension of the requirements of § 3472.1-2(e)(1) of this part for reasons of strikes, the elements, or casualties not attributable to the operator/lessee before diligent development is achieved.

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Subpart 3482—Exploration and Resource Recovery and Protection Plans

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§ 3482.1 Exploration and resource recovery and protection plans.

(a) *Exploration plans.* For background and application procedures for exploration licenses for unleased Federal coal, see 43 CFR part 3410. For background and application procedures for exploration for Federal coal within an approved permit area after mining operations have commenced, see 30 CFR Chapter VII. For any other exploration for Federal coal prior to commencement of mining operations, the following rules apply:

(1) Except for casual use, before conducting any exploration operations on federally leased or licensed lands, the operator/lessee shall submit an exploration plan to and obtain approval from the authorized officer. Casual use, as used in this paragraph, means activities which do not cause appreciable surface distrubance or damage to lands or other resources and improvements. Casual use does not include use of heavy equipment or explosives or vehicular movement off established roads and trails.

(2) The operator/lessee shall submit five copies of exploration plans to the authorized officer. Exploration plans shall be consistent with and responsive to the requirements of the Federal lease or license for the protection of recoverable coal reserves and other resources and for the reclamation of the surface of the lands affected by the operations. The exploration plan shall show that reclamation is an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with such operations.

(3) Exploration plans shall contain all of the following:

(i) The name, address, and telephone number of the applicant, and, if applicable, the operator/lessee of record.

(ii) The name, address, and telephone number of the representative of the applicant who will be present during and be responsible for conducting the exploration.

(iii) A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (a)(3)(viii) of this section, including applicable Federal lease and license serial numbers; surface topography; geologic, surface water, and other physical features; vegetative cover; endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archeological resources located within the proposed exploration area.

(iv) A narrative description of the methods to be used to conduct coal exploration, reclamation, and abandonment of operations including, but not limited to—

(A) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting, and road or other access route construction;

(B) Excavated earth- or debris-disposal activities;

(C) The proposed method for plugging drill holes;

(D) Estimated size and depth of drill holes, trenches, and test pits; and,

(E) Plans for transfer and modification of exploration drill holes to be used as surveillance, monitoring, or water wells.

(v) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation.

(vi) The estimated amounts of coal to be removed during exploration, a description of the method to be used to determine those amounts, and the proposed use of the coal removed.

(vii) A description of the measures to be used during exploration for Federal coal to comply with the performance standards for exploration (§ 3484.1(a) of this title) and applicable requirements of 30 CFR 815.15 or an approved State program.

(viii) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map shall show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; applicable Federal lease and license boundaries; the location of land excavations to be conducted; coal exploratory holes to be drilled or altered; earth- or debris-disposal areas; existing bodies of surface water; and topographic and drainage features.

(ix) The name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal coal is leased to a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(x) Such other data as may be required by the authorized officer.

(b) *Resource recovery and protection plans.* Before conducting any Federal coal development or mining operations on Federal leases or licenses, the operator/lessee shall submit and obtain approval of a resource recovery and protection plan, unless a current resource recovery and protection plan has been approved prior to August 30, 1982. If the resource recovery and protection plan is submitted solely to meet the MLA 3-year submittal requirement, the resource recovery and protection plan shall be submitted to the authorized officer. Upon

receipt of a resource recovery and protection plan, the authorized officer will review such plan for completeness and for compliance with MLA. Prior to commencement of any coal development or mining operations on a Federal lease or license, a permit application package containing, among other documents, a resource recovery and protection plan and a permit application shall be submitted to the regulatory authority. On any Federal lease issued after August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the Federal lease. On any Federal lease issued prior to August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the first lease readjustment after August 4, 1976, or the effective date of the operator/lessee's election provided for at § 3483.1(b)(1) of this title, unless a current resource recovery and protection plan has been approved. Any resource recovery and protection plan submitted but not approved as of August 30, 1982, shall be revised to comply with these rules. A resource recovery and protection plan for an LMU shall be submitted to the authorized officer as provided in § 3487.1(e)(1) of this title.

(c) The authorized officer may contact directly operators/lessees regarding MLA requirements. The resource recovery and protection plan shall contain all the requirements pursuant to MLA for the life-of-the-mine and, unless previously submitted in an LMU application or as directed by the authorized officer, shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered; names and addresses of operators/lessees; Federal lease serial numbers; Federal license serial numbers, if appropriate; and names and addresses of surface and subsurface coal or other mineral owners of record, if other than the United States.

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted.

(3) A description of the proposed mining operation, including:

(i) Sufficient coal analyses to determine the quality of the minable reserve base in terms including, but not limited to, Btu content on an as-received basis, ash, moisture, sulphur, volatile matter, and fixed carbon content.

(ii) The methods of mining and/or variation of methods, basic mining equipment and mining factors including, but not limited to, mining sequence, production rate, estimated recovery factors, stripping ratios, highwall limits, and number of acres to be affected.

(iii) An estimate of the coal reserve base, minable reserve base, and recoverable coal reserves for each Federal lease included in the resource recovery and protection plan. If the resource recovery and protection plan covers an LMU, recoverable coal reserves will also be reported for the non-Federal lands included in the resource recovery and protection plan.

(iv) The method of abandonment of operations proposed to protect the unmined recoverable coal reserves and other resources.

(4) Maps and cross sections, as follows:

(i) A plan map of the area to be mined showing the following—

(A) Federal lease boundaries and serial numbers;

(B) LMU boundaries, if applicable;

(C) Surface improvements, and surface ownership and boundaries;

(D) Coal outcrop showing dips and strikes; and,

(E) Locations of existing and abandoned surface and underground mines.

(ii) Isopach maps of each coal bed to be mined and the overburden and interburden.

(iii) Typical structure cross sections showing all coal contained in the coal reserve base.

(iv) General layout of proposed surface or strip mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location and width of coal fenders; and,

(C) Cross sections of typical pits showing highwall and spoil configuration, fenders, if any, and coal beds.

(v) General layout of proposed underground mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location of shafts, slopes, main development entries and barrier pillars, panel development, bleeder entries, and permanent barrier pillars;

(C) Location of areas where pillars will be left and an explanation why these pillars will not be mined;

(D) A sketch of a typical entry system for main development and panel development entries showing centerline distances between entries and crosscuts;

(E) A sketch of typical panel recovery (e.g., room and pillar, longwall, or other mining method) showing, by numbering such mining, the sequence of development and retreat; and,

(vi) For auger mining—

(A) A plan map showing the area to be auger mined and location of pillars to be left to allow access to deeper coal;

(B) A sketch showing details of operations including coal bed thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(5) A general reclamation schedule for the life-of-the-mine. This should not be construed as meaning duplication of a permit application in a permit application package under SMCRA. The resource recovery and protection plan may cross-reference, as appropriate, a permit application submitted under SMCRA to fulfill this requirement.

(6) Any required data which are clearly duplicated in other submittals to the regulatory authority or Mine Safety and Health Administration may be used to fulfill the requirements of the above paragraphs provided that the cross-reference is clearly stated. A copy of the relevant portion of such submittals must be included in the resource recovery and protection plan.

(7) Explanation of how MER of the Federal coal will be achieved for the Federal coal leases included in the resource recovery and protection plan. If a coal bed, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

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§ 3482.2 Action on plans.

(a)(1) *Exploration plans.* The authorized officer after evaluating a proposed exploration plan and all comments received thereon, and after consultation with the responsible officer of the surface managing agency, and with the regulatory authority when exploration is to be conducted within an approved permit area prior to commencement of mining operations, shall promptly approve or disapprove in writing an exploration plan. In approving an exploration plan, the authorized officer shall determine that the exploration plan complies with the rules of this part, applicable requirements of 30 CFR 815.15 or an approved State program, and any Federal lease or license terms and/or conditions. Reclamation must be accomplished as set forth in the exploration plan. The authorized officer may impose additional conditions to conform to the rules of this part. In disapproving an exploration plan, the authorized officer shall state what modifications, if any, are necessary to achieve such conformity. No exploration plan shall be approved unless the bond, executed pursuant to the provisions of 43 CFR part 3474 or 43 CFR part 3410, has been determined by the responsible officer of the surface managing agency to be adequate. When the land involved in the exploration plan is under the surface management jurisdiction of an agency other than DOI, that other agency must concur with the approval terms of the exploration plan.

(2) *Resource recovery and protection plans.* No resource recovery and protection plan or modification thereto shall be approved which is not in conformance with the rules of this part, any Federal lease or license terms and/or conditions, and is not found to achieve MER of the Federal coal within an LMU or Federal lease issued or readjusted after August 4, 1976. The determination of MER shall be made by the authorized officer based on review of the resource recovery and protection plan. No resource recovery and protection plan shall be approved prior to the filing of a complete permit application package and unless the Federal lease bond, executed pursuant to the provisions of 43 CFR part 3474 has been determined by the authorized officer to be adequate.

(3) *Recoverable coal reserves estimates.* For all Federal coal leases issued or readjusted after August 4, 1976, the recoverable coal reserves or LMU recoverable coal reserves shall be those estimated by the authorized officer as of the date of approval of the resource recovery and protection plan, or the date of approval of any existing mining plan as defined at 30 CFR 740.5 (1981). If an operator/lessee credits production toward diligent development in accordance with § 3483.5 of this title, such credits shall be included in the recoverable coal reserves or LMU recoverable coal reserves estimates. The estimate of recoverable coal reserves or LMU recoverable coal reserves may only be revised as new information becomes available. Estimates of recoverable coal reserves or LMU recoverable coal reserves shall not be reduced due to any production after the original estimate made by the authorized officer.

(b) *Changes in plans by authorized officer.* (1) Approved exploration plans may be required to be revised or supplemented at any time by the authorized officer, after consultation with the operator/lessee and the responsible officer of the surface managing agency as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements.

(2) The authorized officer, pursuant to MLA, may require approved resource recovery and protection plans to be revised or supplemented reasonably for modifications, after consultation with the operator/lessee and the regulatory authority as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements. Such revisions shall be made in writing, as appropriate, and the authorized officer shall submit a copy to the regulatory authority.

(c) *Changes in plans by operator/lessee.* (1) The operator/lessee may propose modifications to an approved exploration plan and shall submit a written statement of the proposed change and its justification to the authorized officer. The authorized officer shall promptly approve or disapprove in writing any such modifications, after consultation with the responsible officer of the managing agency and the regulatory authority as necessary, or specify conditions under which they would be acceptable.

(2) The operator/lessee may propose modifications to an approved resource recovery and protection plan for any requirements under MLA, and shall submit a written statement of the proposed change and its justification to the authorized officer. The authorized officer shall promptly approve or disapprove in writing any such modifications, after consultation with the regulatory authority as necessary, or specify conditions under which they would be acceptable. Upon approval of modifications, the authorized officer shall submit a copy to the regulatory authority.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

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§ 3482.3 Mining operations maps.

(a) *General requirements.* Upon commencement of mining operations, the operator/lessee shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the authorized officer. Before a mine or section of a mine is abandoned, closed, or made inaccessible, a survey of the mine or section shall be made by the operator/lessee and recorded on such maps. All excavations in each separate coal bed shall be shown in such a manner that the production of coal for any royalty reporting period can be accurately ascertained. Additionally, the maps shall show the name of the mine; name of the operator/lessee; Federal lease or license serial number(s); permit number; Federal lease and permit boundary lines; surface buildings; dip of the coal bed(s); true north; map scale; map explanation; location, diameter, and depth of auger holes; improvements; topography, including subsidence resulting from mining; geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, splits, unusual water occurrences, or other conditions that may influence MER; and other information that the authorized officer may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the authorized officer annually, or at such other times as the authorized officer requests. Copies of any maps, normally submitted to the regulatory authority, Mine Safety and Health Administration, or other State or Federal Agencies, that show all of the specific data required by this paragraph or paragraphs (b), (c), and (d) of this section shall be acceptable in fulfilling these requirements.

(b) *Underground mine maps.* Underground mine maps, in addition to the general requirements of paragraph (a) of this section, shall show all mine workings; the date of extension

of the mine workings; an illustrative coal section at the face of each working unit; location of all surface mine fans; ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in, above, or below the active workings of the mine; areas affected by squeezes; elevations of surface and underground levels of all shafts, slopes, or drifts, and elevation of the floor, bottom of the mine workings, or mine survey stations in the roof at regular intervals in main entries, panels, or sections; and sump areas. Any maps submitted to the regulatory authority to be used to monitor subsidence shall also be submitted to the authorized officer.

(c) *Surface mine maps.* Surface mine maps, in addition to the general requirements of paragraph (a) of this section, shall include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved resource recovery and protection plan. Such maps shall show areas from which coal has been removed; the highwall; fenders; uncovered, but unmined, coal beds; and elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When required by the authorized officer, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet standards acceptable to the authorized officer and shall be certified by a professional engineer, professional land surveyor, or other such professionally qualified person.

(f) *Liability of operator/lessee for expense of survey.* If the operator/lessee fails to furnish a required or requested map within a reasonable time, the authorized officer, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator/lessee.

(g) *Incorrect maps.* If any map submitted by an operator/lessee is believed to be incorrect, and the operator/lessee cannot verify the map or supply a corrected map, the authorized officer may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the operator/lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator/lessee.

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Subpart 3483—Diligence Requirements

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§ 3483.1 Diligent development and continued operation requirement.

(a) *General requirements.* (1) Except as provided at paragraph (b) of this section, each Federal coal lease and LMU is required to achieve diligent development.

(2) Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in § 3483.3 of this title.

(b) Federal coal leases issued prior to August 4, 1976, until the first readjustment of the lease after August 4, 1976, shall be subject to the Federal lease terms, including those that describe the minimum production requirement, except that:

(1) An operator/lessee holding such a lease may elect to be subject to the rules of this part by notifying the authorized officer in writing prior to August 30, 1983.

(i) Such election shall consist of a written request, in triplicate, to the authorized officer that a Federal lease(s) be subject to the rules of this part, and shall contain the following—

(A) Name and address of the operator/lessee of record.

(B) Federal lease number(s).

(C) Certified record of annual Federal coal production since August 4, 1976, for the Federal lease(s) that the operator/lessee requests to have credited toward diligent development in accordance with § 3483.5 of this title.

(ii) Upon verification by the authorized officer of the reported annual Federal coal production, the authorized officer shall notify the operator/lessee by certified mail, return receipt requested, that the election has been approved. The effective date of the election shall be the most recent royalty reporting period prior to the submittal of the election to the authorized officer.

(2) Upon the effective date of the first lease readjustment after August 4, 1976, all such Federal leases shall be subject to the rules of this part.

(c) Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU in lieu of those diligent development and continued operation requirements that would apply to the Federal lease individually.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

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§ 3483.2 Termination or cancellation for failure to meet diligent development and maintain continued operation.

(a) Any Federal coal lease or LMU which has not achieved diligent development shall be terminated by DOI.

(b) After an LMU has been terminated under the provision of paragraph (a) of this section, any Federal coal lease included in that LMU shall then be subject to the diligent development and continued operation requirements that would have been imposed on that Federal lease by the rules of this part, as if the Federal lease had not been included in the LMU.

(c) Any Federal coal lease on which continued operation is not maintained shall be subject to cancellation.

(d) The DOI may cancel any Federal coal lease or LMU which fails to meet the requirement for submission of a resource recovery and protection plan.

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§ 3483.3 Suspension of continued operation or operations and production.

(a) Applications for suspensions of continued operation must be filed in triplicate in the office of the authorized officer. The authorized officer, if he or she determines an application to be in the public interest, may approve the application or terminate suspensions that have been or may be granted.

(1) The authorized officer must suspend the requirement for continued operation by the period of time he or she determines that strikes, the elements, or casualties not attributable to the operator/lessee have interrupted operations under the Federal coal lease or LMU.

(2) The authorized officer may suspend the requirement for continued operation upon the payment of advance royalty in accordance with § 3481.0-6 of this title for any operation. The authorized officer, upon notifying the operator/lessee 6 months in advance, may cease to accept advance royalty in lieu of the requirement for continued operation.

(b) In the interest of conservation, the authorized officer is authorized to act on applications for suspension of operations and production filed pursuant to paragraph (b) of this section, direct suspension of operations and production, and terminate such suspensions which have been or may be granted. Applications by an operator/lessee for relief from any operations and production requirements of a Federal lease shall contain justification for the suspension and shall be filed in triplicate in the office of the authorized officer.

(1) A suspension in accordance with paragraph (b) of this section shall take effect as of the time specified by the authorized officer. Any such suspension of a Federal coal lease or LMU approved by the authorized officer also suspends all other terms and conditions of the Federal coal lease or LMU, for the entire period of such a suspension. Rental and royalty payments will be suspended during the period of such suspension of all operations and production, beginning with the first day of the Federal lease month on which the suspension of operations and production becomes effective. Rental and royalty payments shall resume on the first day of the Federal lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty on producing Federal leases due under the Federal lease.

(2) The minimum annual production requirements shall be proportionately reduced for that portion of a Federal lease year for which suspension of operations and production is directed or granted by the authorized officer, in the interest of conservation of recoverable coal reserves and other resources, in accordance with paragraph (b) of this section.

(3) The term, including the diligent development period, of any Federal lease shall be extended by adding to it any period of suspension in accordance with paragraph (b) of this section, of operations and production.

(4) A suspension in accordance with paragraph (b) of this section does not suspend the permit and the operator/lessee's reclamation obligation under the permit.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983, and amended at 53 FR 49986, Dec. 13, 1988; 62 FR 44370, Aug. 20, 1997]

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

(a) Advance royalty may only be accepted in lieu of continued operation upon application to and approval by the authorized officer.

(b) However, any request by an operator/lessee for suspension of the continued operation requirement and payment of advance royalty in lieu thereof shall be made no later than 30 days after the beginning of the continued operation year. If an operator/lessee requests authorization to pay advance royalty in lieu of continued operation later than 30 days after the beginning of any continued operation year, the authorized officer may condition acceptance of advance royalty on the payment of a late payment charge on the amount of the advance royalty due. The late payment charge will be calculated in accordance with 30 CFR 218.20.

(c) For advance royalty purposes, the value of the Federal coal will be calculated in accordance with § 3485.2 of this title and this section. When advance royalty is accepted in lieu of continued operation, it shall be paid in an amount equivalent to the production royalty that would be owed on the production of 1 percent of the recoverable coal reserves or the Federal LMU recoverable coal reserves. The advance royalty rate for an LMU shall be deemed to be 8 percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered by only underground mining operations and 12½ percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered only by other mining operations. For LMU's that contain Federal LMU recoverable coal reserves that would be recovered by a combination of underground and other mining methods, the advance royalty rate shall be deemed to be 12½ percent. The unit value of the recoverable coal reserves for determining the advance royalty payment for a Federal lease or LMU shall be:

(1) The unit value for production royalty purposes of coal produced and sold under the Federal coal lease or LMU during the immediately preceding production royalty payment period; or

(2) Computed at the average unit price at which coal from other Federal leases in the same region was sold during such period, if no coal was produced and sold under the Federal coal lease or LMU during the immediately preceding royalty payment period, or if the authorized officer finds that there is an insufficient number of such sales to determine such value equitably; or

(3) Determined by the authorized officer, if there were no sales of Federal coal from such region during such period or if the authorized officer finds that there is an insufficient number of such sales to determine such value equitably.

(d) The aggregate number of years during the period of any Federal coal lease or LMU for which advance royalty may be accepted in lieu of the requirement of continued operation shall not exceed 10. For Federal leases issued prior to August 4, 1976, advance royalty shall not be accepted in lieu of continued operation for more than a total of 10 years following the first lease readjustment after August 4, 1976. Any continued operation year in which any advance royalty is paid shall be deemed a year in which advance royalty is accepted in lieu of continued operation for the purposes of this paragraph. However, if an operator/lessee meets the requirement for continued operation in any continued operation year in which the operator/lessee has paid advance royalty, such year shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the Federal lease or LMU. The number of years for which advance royalty has been paid under any Federal coal lease prior to its inclusion in an LMU shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the LMU.

(e) The dollar amount of any production royalty for a Federal coal lease or LMU owed for any continued operation year during or subsequent to the continued operation year in which advance royalty is paid, shall be reduced (but not below zero) by the dollar amount of any advance royalty paid under that Federal lease or LMU to the extent that such advance royalty has not been used to reduce production royalty for a prior year.

(f) No advance royalty paid during the initial 20-year term of a Federal coal lease or LMU shall be used to reduce a production royalty pursuant to paragraph (e) of this section after the 20th year of the Federal coal lease or LMU. For purposes of this paragraph, the initial 20-year term of a Federal lease shall commence on the effective date of the Federal lease for all Federal leases issued after August 4, 1976; on the effective date of the first lease readjustment after August 4, 1976, for all Federal leases issued prior to August 4, 1976; and on the effective date of LMU approval for all LMU's. Any advance royalty paid on a Federal lease prior to its inclusion in an LMU shall be credited to the LMU and shall be considered to have been paid on the date of LMU approval for the purposes of this paragraph, provided that the Federal lease has been included in an LMU within the initial 20-year term of the Federal lease as determined in this paragraph and to the extent that the advance royalty has not already been credited against production royalty on the Federal lease.

(g) If an operator/lessee fails to make an approved advance royalty payment in any continued operation year, the authorized officer shall inform the operator/lessee in writing that the operator/lessee is in violation of the continued operation requirement. If the operator/lessee then fails to comply with 30 CFR 218.200, the Federal lease or LMU shall be subject to cancellation pursuant to § 3483.2 of this title.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

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§ 3483.5 Crediting of production toward diligent development.

(a) For Federal coal leases issued after August 4, 1976, all production after the effective date of the Federal lease shall be credited toward diligent development.

(b) For Federal coal leases issued prior to August 4, 1976, all production after the effective date of the first lease readjustment after August 4, 1976, shall be credited toward diligent development.

(c) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under § 3483.1 of this title to be subject to the diligent development and continued operation requirements of the rules of this part, all production after the effective date of the operator/lessee's election shall be applied toward diligent development.

(d) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under § 3483.1 of this title to be subject to the diligent development and continued operation requirements of the rules of this part, all production after August 4, 1976, that occurred prior to the effective date of the operator/lessee's election shall be applied toward diligent development if the operator/lessee so requests.

(e) For Federal coal leases issued prior to August 4, 1976, that have been readjusted after August 4, 1976, all production after August 4, 1976, that occurred prior to the effective date of the first lease readjustment after August 4, 1976, shall be applied toward diligent development if the operator/lessee so requests. Such a request shall comply with the election application provisions at § 3483.1(b)(1) of this title. Any production after such readjustment shall be applied toward diligent development pursuant to paragraph (b) of this section.

(f) For Federal coal leases issued prior to August 4, 1976, that are governed by the Federal lease clauses which describe the minimum production requirements until the first lease

readjustment after August 4, 1976, no production prior to the effective date of that first Federal lease readjustment shall be applied toward diligent development.

(g) For LMU's, any production credited under the rules of this part to a Federal lease prior to its inclusion in the LMU shall be applied toward diligent development for the LMU.

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§ 3483.6 Special logical mining unit rules.

(a) Production anywhere within the LMU, of either Federal or non-Federal recoverable coal reserves or a combination thereof, shall be applied toward satisfaction of the requirements of the rules of this part for achievement of diligent development and continued operation for the LMU.

(b) The dates for submission of a resource recovery and protection plan and achievement of diligent development shall not be changed by any enlargement or diminution of the LMU.

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Subpart 3484—Performance Standards

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§ 3484.1 Performance standards for exploration and surface and underground mining.

The following performance standards shall apply to exploration, development, production, resource recovery and protection, MER, and preparation and handling of coal under Federal leases and licenses, and LMU's.

(a) *Performance standards for exploration.* (1) The operator/lessee shall comply with the standards of the rules of this part and with all applicable requirements of the surface management agency, 30 CFR 815.15, or an approved State program.

(2) The operator/lessee, if required by the authorized officer, shall set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources.

(3) All exploration drill holes must be capped with at least 5 feet of cement and plugged with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. For exploration holes drilled deeper than stripping limits, the operator/lessee, using cement or other suitable plugging material approved by the authorized officer, shall plug the hole through the thickness of the coal bed(s) or mineral deposit(s) and through aquifers for a distance of at least 50 feet above and below the coal bed(s) or mineral deposit(s) and aquifers, or to the bottom of the drill hole. A lesser cap or plug may be approved by the authorized officer. Exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and ensure the safety of people, livestock, and wildlife.

(4) The operator/lessee shall retain for 1 year, unless a shorter time period is authorized by the authorized officer, all drill and geophysical logs and shall make such logs available for inspection or analysis by the authorized officer, if requested. The authorized officer, at his discretion, may require the operator/lessee to retain representative samples of drill cores for 1

year. Confidentiality of such information will be accorded pursuant to the provisions at § 3481.3 of this title.

(5) The operator/lessee may utilize exploration drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases only with the written approval of the authorized officer, in consultation with the regulatory authority. The operator/lessee may convert exploration drill holes to water wells only after approval of the operator/lessee's written request by the authorized officer and the surface owner or authorized officer, in consultation with the regulatory authority. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability including eventual plugging, reclamation, and abandonment. Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer, conversion, or utilization as a supply for domestic consumption.

(b) *General performance standards for surface and underground mining* —(1) *Maximum economic recovery (MER).* Upon approval of a resource recovery and protection plan for an LMU, or for a Federal lease issued or readjusted after August 4, 1976, the operator/lessee shall conduct operations to achieve MER of the Federal coal. To determine that MER of the Federal coal will be achieved, the authorized officer shall consider the information submitted by the operator/lessee under § 3482.1(c) and/or § 3487.1(c) of this title. The authorized officer may request additional information from the operator/lessee to aid in the MER determination. The operator/lessee shall consider coal preparation operations to avoid the wasting of coal and to encourage the achievement of MER. Federal leases issued prior to August 4, 1976, that have not yet been readjusted after August 4, 1976, shall comply with MLA regarding conservation of the recoverable coal reserves and other resources.

(2) Diligent development, continued operation, advance royalty, and 3-year resource recovery and protection plan submission requirements are addressed at §§ 3483.1 through 3483.6 of this title.

(3) *Unexpected wells.* The operator/lessee shall notify the authorized officer promptly if operations encounter unexpected wells or drill holes which could adversely affect the recovery of coal during mining operations, and shall take no further action that would disturb such wells or drill holes without the approval of the authorized officer.

(4) *Resource recovery and protection.* The operator/lessee shall conduct efficient operations to recover the recoverable coal reserves; prevent wasting and conserve the recoverable coal reserves and other resources; prevent damage or degradation to coal-bearing or mineral-bearing formations; and ensure that other resources are protected upon abandonment.

(5) *Release of lease bond.* Subsequent to permanent abandonment of mining operations, the authorized officer will determine if the operator/lessee has met obligations required under the Federal lease for resource recovery and protection, and will determine if the operator/lessee has met the Federal lease requirements pertaining to rentals and royalties. The authorized officer will make appropriate recommendations to the authorized officer for reduction or termination of the Federal lease bond.

(c) *Performance standards for underground mines* —(1) *Underground resource recovery.* Underground mining operations shall be conducted so as to prevent wasting of coal and to conserve recoverable coal reserves consistent with the protection and use of other resources. No entry, room, or panel workings in which the pillars have not been completely mined within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the authorized officer.

(2) *Subsidence.* The operator/lessee shall adopt mining methods which ensure proper recovery of recoverable coal reserves under MLA, as determined by the authorized officer. Operators/lessees of underground coal mines shall adopt measures consistent with known technology in order to prevent or, where the mining method used requires subsidence, control subsidence, maximize mine stability, and maintain the value and use of surface lands consistent with 30 CFR 784.20 and 817.121, 817.122, 817.124, and 817.126, or applicable requirements of an approved State program. Where pillars are not removed and controlled subsidence is not part of the resource recovery and protection plan, pillars of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and the strata above and immediately below the coal beds.

(3) *Top coal.* Top coal may be left in underground mines only upon approval by the authorized officer. The determination of mining height in thick coal beds will take into consideration safety factors, available equipment, overall coal bed thickness, and MER. The bottom coal left, if determined by the authorized officer to be of a minable thickness, should be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow.

(4) *Multiple coal bed mining.* (i) In general, the recoverable coal reserves in the upper coal beds shall be mined before the lower coal beds; simultaneous workings in each upper coal bed shall be kept in advance of the workings in each lower coal bed. The authorized officer may authorize mining of any lower coal beds before mining the upper coal bed(s) only after a technical justification, submitted to the authorized officer by the operator/lessee, shows that recovery of all coal bed(s) will not be adversely affected.

(ii) In areas subject to multiple coal bed mining, the protective barrier pillars for all main and secondary development entries, main haulageways, primary aircourses, bleeder entries, and manways in each coal bed shall be superimposed regardless of vertical separation or rock competency; however, modifications and exceptions to, or variations from, this requirement may be approved in advance by the authorized officer.

(5) The authorized officer shall approve the conditions under which an underground mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this part.

(6) *Barrier pillars left for support.* (i) The operator/lessee shall not, without prior consent of the authorized officer, mine any recoverable coal reserves or drive any underground workings within 50 feet of any of the outside boundary lines of the federally leased or licensed land, or within such greater distance of said boundary lines as the authorized officer may prescribe with consideration for State or Federal environmental or safety laws. The operator/lessee may be required to pay for unauthorized mining of barrier pillars. The authorized officer may require that payment shall be up to, and include, the full value of the recoverable coal reserves mined from the pillars. The drilling of any lateral holes within 50 feet of any outside boundary shall be done in consultation with the authorized officer.

(ii) If the coal in adjoining premises has been worked out, an agreement shall be made with the coal owner prior to the mining of the coal remaining in the Federal barrier pillars which otherwise may be lost. If the water level beyond the pillar is below the operator/lessee's adjacent operations, and all the safety factors have been considered, the operator/lessee, on the written order of the authorized officer, shall mine out and remove all available Federal recoverable coal reserves in such barrier if it can be mined without undue hardship to the operator/lessee; with due consideration for safety; and pursuant to existing mining, reclamation, and environmental laws and rules. Either the operator/lessee or the authorized officer may initiate the proposal to mine coal in a barrier pillar.

(7) The abandonment of a mining area shall require the approval of the authorized officer.

(d) *Performance standards for surface mines.* (1) Pit widths for each coal bed shall be engineered and designed so as to eliminate or minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(2) The amount of bottom or rider coal beds wasted in each pit will be minimized consistent with individual mine economics and the coal quality standards that must be maintained by the operation.

(3) The abandonment of a mining area shall require the approval of the authorized officer.

(4) If a coal bed exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator/lessee shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(5) The authorized officer shall approve the conditions under which a surface mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this part.

(6) *Barrier or boundary coal.* The operator/lessee shall be encouraged by the authorized officer, in the interest of conservation of recoverable coal reserves and other resources, to mine coal up to the Federal lease or license boundary line; provided that, the mining is in compliance with existing State and Federal mining, environmental and reclamation laws and rules, the mining does not conflict with existing surface rights, and the mining is carried out without undue hardship to the operator/lessee and with due consideration for safety.

(e) *Performance standards for auger mines.* (1) If auger mining is proposed, the authorized officer shall take into account the percentage of recovery, which in general shall exceed 30 percent, and the probable effect on recovering the remaining adjacent recoverable coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved if underground mining would ensure greater recovery of the unmined recoverable coal reserves. Where auger mining is authorized, the authorized officer will require a sufficient number and size of pillars at regular intervals along the highwall or outcrop to ensure access to the unmined recoverable coal reserves.

(2) A plan for recovery of recoverable coal reserves by auger methods shall be designed to achieve MER.

(3) Auger mining must comply with the rules of this part, and 30 CFR Chapter VII or applicable requirements of an approved State program.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

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§ 3484.2 Completion of operations and permanent abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved exploration plan. Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not endanger any present or future underground operation, or any deposit of coal, oil, gas,

mineral resources, or ground water. Areas disturbed by exploration operations will be graded, drained, and revegetated.

(b) Upon permanent abandonment of mining operations, the authorized officer will require that the unmined recoverable coal reserves and other resources be adequately protected. Upon completion of abandonment, the authorized officer will inform the responsible office of the surface managing agency and regulatory authority as to whether the abandonment has been completed in compliance with the rules of this part.

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Subpart 3485—Reports, Royalties and Records

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§ 3485.1 Reports.

(a) *Exploration reports.* The operator/lessee shall file with the authorized officer the information required in paragraph (b) of this section. Such filing shall be within 30 days after the end of each calendar year and promptly upon completion or suspension of exploration operations, unless otherwise provided in the exploration license or Federal lease, and at such other times as the authorized officer may request.

(b) *Exploration report content.* The exploration report shall contain the following information:

(1) Location(s) and serial number(s) of the federally leased or licensed lands.

(2) Nature of exploration operations.

(3) Number of holes drilled and/or other work performed during the year or report period.

(4) Total footage drilled during the year or other period as determined by the authorized officer.

(5) Map showing all holes drilled, other excavations, and the coal outcrop lines.

(6) Analyses of coal and other pertinent tests obtained from exploration operations during the year.

(7) Copies of all in-hole mechanical or geophysical stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(8) Status of reclamation of the disturbed areas.

(9) A statement on availability and location of all drill hole logs and representative drill cores retained by the operator/lessee pursuant to § 3484.1(a) of this title.

(10) Any other information requested by the authorized officer.

(c) Any coal reserve base, minable reserve base or recoverable coal reserves estimates generated from an exploration license shall be submitted to the authorized officer within 1 year after completion of drilling operations.

(d) *Production reports and payments.* (1) Operators/lessees shall report on USGS Form 9-373A, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing Federal royalty and any other form requirements, and shall make all payments due. Acceptance of the report and payment shall not be construed as an accord and satisfaction on the operator/lessee's Federal royalty obligation.

(2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(3) Non-Federal LMU production shall be reported in accordance with § 3487.1(h)(1) of this title.

(e) *Penalty.* If an operator/lessee knowingly records or reports less than the true weight or value of coal mined, the authorized officer shall impose a penalty equal to either double the amount of Federal royalty due on the shortage or the full value, as determined in § 3485.2 of this title, of the shortage. If, after notice, an operator/lessee or licensee maintains false records or files false reports, the authorized officer may recommend to the responsible officer of the surface managing agency that action be initiated to cancel the Federal lease or license, in addition to the imposition of any penalties.

(f) *Confidentiality.* Confidentiality of any information required under this section shall be determined in accordance with § 3487.1(h)(1) of this title.

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§ 3485.2 Royalties.

(a) Provisions for the payment of advance royalty in lieu of continued operation are contained at § 3483.4 of this title.

(b) An overriding royalty interest, production payment, or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in the Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows that he has made substantial investments for improvements directly related to exploration, development, and mining on the land covered by the transfer that would justify a higher payment.

(c)(1) The authorized officer may waive, suspend, or reduce the rental on a Federal lease, or reduce the Federal royalty, but not advance royalty, on a Federal lease or portion thereof. The authorized officer shall take such action for the purpose of encouraging the greatest ultimate recovery of Federal coal, and in the interest of conservation of Federal coal and other resources, whenever in his judgment it is necessary to promote development, or if he finds that the Federal lease cannot be successfully operated under its terms. In no case shall the authorized officer reduce to zero any royalty on a producing Federal lease.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the authorized officer. The application shall contain the serial number of the Federal lease, the

Bureau of Land Management State Office, the name and address of the record title holder and any operator/lessee, and the description of the lands in the manner provided by 43 CFR 3471.1.

(i) Each application shall include the name and location of the mine; a map showing the extent of the existing, proposed or adjoining mining operations; a tabulated statement of the Federal coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; and existing Federal rental and royalty rates on Federal leases covered by the application.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire mine, the income from the sale of coal, and all facts indicating whether the mine can be successfully operated under the Federal rental and royalty provisions fixed in the Federal lease or why the reduction is necessary to promote development. Where the application is for a reduction in Federal royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any. If the Federal lease included in the application is not part of nor adjoining an operating mine, these detailed financial data may be obtained from another operating mine which is in close proximity and for which the authorized officer has deemed to have similar operating characteristics.

(iii) The applicant shall also file a copy of agreements, between the operator/lessee and the holders of any royalty interests or production payments other than those created in order to finance a mine, to a reduction of all other royalties from the Federal lease so that the total royalties and production payments owed the holders of these interests will not be in excess of one-half of the Federal royalties, should the Federal royalty reduction be granted.

(3) If the applicant does not meet the criteria of the rules of this part, the authorized officer shall reject such application or request more data from the operator/lessee.

(4) If the applicant meets the criteria of the rules of this part, the authorized officer shall act on the application.

(d) If a Federal coal lease that provides for a cents-per-ton Federal royalty is developed by *in situ* technology, BLM will establish a procedure for estimating tonnage for royalty purposes.

[47 FR 33179, July 30, 1982. Redesignated at 48 FR 41589-41594, Sept. 16, 1983, and amended at 54 FR 1532, Jan. 13, 1989]

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§ 3485.3 Maintenance of and access to records.

(a) Operators/lessees shall maintain current and accurate records for the Federal lease or LMU showing:

(1) The type, quality, and weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) [Reserved]

(c) Licensees must maintain a current record of all coal mined and/or removed.

(d) Operators/lessees will retain these records for a period of time as determined by the authorized officer in accordance with current BLM rules and procedures.

[47 FR 33179, July 30, 1982, as amended at 48 FR 35641, Aug. 5, 1983. Redesignated at 48 FR 41589, Sept. 16, 1983]

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Subpart 3486—Inspection, Enforcement, and Appeals

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§ 3486.1 Inspections.

(a) The operator/lessee shall provide access, at all reasonable times, to the authorized officer for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved exploration plan for:

(1) Abandonment.

(2) Environmental protection and reclamation practices.

(b) The operator/lessee shall provide access, at all reasonable times, to the authorized officer for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved resource recovery and protection plan for:

(1) Production practices.

(2) Development.

(3) Resource recovery and protection.

(4) Diligent development and continued operation.

(5) Audits of Federal rental and royalty payments on producing Federal leases.

(6) Abandonment.

(7) MER determinations.

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§ 3486.2 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the authorized officer in writing of the operator/lessee's post office address and the name and post office address of the superintendent or designated agent who will be in charge of the

operations and who will act as the local representative of the operator/lessee. Thereafter, the authorized officer shall be informed of any changes.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, to the mine office or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

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§ 3486.3 Enforcement.

(a) If the authorized officer determines that an operator/lessee has failed to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this part, the authorized officer shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the authorized officer shall be grounds for cessation of operations upon notice by the authorized officer. The authorized officer may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the authorized officer, an operator/lessee is conducting activities which fail to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the authorized officer shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the authorized officer when such noncompliance has been corrected. Upon concurrence by the authorized officer that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the authorized officer shall so notify the operator/lessee in writing.

(e) The authorized officer shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

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§ 3486.4 Appeals.

Decisions or orders issued by the BLM under part 3480 of this title may be appealed pursuant to part 4 of this title.

[48 FR 41593, Sept. 16, 1983]

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Subpart 3487—Logical Mining Unit

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§ 3487.1 Logical mining units.

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

(b) The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU containing Federal coal leases issued prior to August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this part. Any Federal lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to paragraph (e) of this section.

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the authorized officer if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the authorized officer in accordance with paragraph (b) of this section. Such application shall include the following:

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

(2) Federal lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the LMU.

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

(4) Sufficient data to enable the authorized officer to determine that MER of the Federal recoverable coal reserves will be achieved by establishment of the LMU. If a coal bed, or portion

thereof, is proposed not to be mined or to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval.

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

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

(d) *Consultation.* (1) Prior to approval, the authorized officer shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The authorized officer shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

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

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

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by § 3482.1(c) of this title for all Federal and non-Federal lands within the LMU.

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

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

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

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

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

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

(ii) The date of approval of the resource recovery and protection plan for the LMU if no portion of the LMU is producing on the effective date of the LMU; or

(iii) The date coal is first produced from any portion of the LMU, if the LMU begins production after the effective date of the LMU but prior to approval of the resource recovery and protection plan for the LMU.

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

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

(1) The LMU fully meets the LMU definition.

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

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

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

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

(ii) Facilitate development of the coal reserves in an efficient, economical, and orderly manner. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

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

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

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

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

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

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

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

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

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The authorized officer will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

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

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

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

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

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

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

(h) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the authorized officer after consultation with the responsible officer of the surface managing agency, or by direction of the authorized officer after consultation with the authorized officer. In accordance with § 3482.2(a)(3) of this title, the authorized officer may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR part 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR part 3452.

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

(4) The authorized officer will not extend the 40-year period in which the reserves of the entire LMU must be mined, as specified at paragraph (e)(6) of this section, because of the enlargement of an LMU or because of the modification of a resource recovery and protection plan.

(i) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

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

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

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

[47 FR 33179, July 30, 1982. Redesignated at 48 FR 41589-41594, Sept. 16, 1983, and amended at 51 FR 13229, Apr. 18, 1986; 62 FR 44370, Aug. 20, 1997]