this is necessary since most of the Commission's regulations use terms such as "shippers," "carriers," or "applicants," not pronouns such as "he" or "she". However, every regulation being drafted or reviewed is being checked and if any references based on gender are found, they will be eliminated.

In the draft notice, the Commission noted that, in many cases, it is public complaints and suggestions which call attention to the need to review specific regulations. The agenda of rulemaking proceedings, being published in conjunction with this proceeding, also contains a list of regulations under review and a specific invitation for the public to file suggestions as to other regulations which should be reviewed. The Commission hopes to receive such comments, and it anticipates that they will play a major role in helping it to select regulations for review in the future.

Accordingly, the statement on improving Commission regulation published June 26, 1978, as modified above, is adopted as the policy of the Commission.

Decided: July 2, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown absent and not participating. Commissioner Gresham dissenting.

H. G. Homme, Jr.,

Secretary.

Commissioner Gresham, dissenting, in part:

Since I question the ability of the Office of Special Counsel to independently represent the public interest in Commission proceedings, I am not convinced that the participation of this office will mitigate the problems of public participation raised in this policy statement.

[FR Doc. 79-22205 Filed 7-18-79; 8:45 am]

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Thursday
July 19, 1979

Part VII

Department of Defense

Defense Civil Preparedness Agency

Program for Financial Contributions to States for State and Local Civil Defense Personal and Administrative Expenses; Proposed Rule

DEPARTMENT OF DEFENSE

Defense Civil Preparedness Agency

[32 CFR Part 1807]

Program for Financial Contributions to States for State and Local Civil Defense Personal and Administrative Expenses

AGENCY: Defenses Civil Preparedness Agency, Department of Defense.

ACTION: Proposed Rule.

SUMMARY: This document proposes a revision of the existing regulations governing the program for financial contributions to States for State and local civil defense personal and administrative expenses.

DATE: All comments must be received in writing by September 17, 1979.

ADDRESS: Send comments to Defense Civil Preparedness Agency, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: John W. McConnell, Assistant Director for Plans and Operations, 202–697–8314.

SUPPLEMENTARY INFORMATION: DCPA is revising its existing regulations in order to formally publish a reference to and description of the uniform administrative requirements and the cost principles, prescribed under OMB Circular A–102 (42 FR 45828) and under FMC 74–4 (39 FR 27133), respectively, as they apply to the program for financial contributions to States for necessary and essential State and local civil defense personal and administrative expenses granted under the authority of Section 205 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297). In addition DCPA is revising the provisions on merit system requirements to affirmatively adopt, as a regulatory requirement rather than a statutory requirement, the standards for a Merit System of Personnel Administration (5 CFR Part 900) which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648, Sec. 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970, as amended. Section 602 of the Civil Service Reform Act of 1978 (92 Stat. 1189) had the effect of abolishing the merit system requirements imposed upon financial assistance grantees by Section 205 of the Federal Civil Defense Act of 1950, as amended. Accordingly, if the merit system standards are to apply under the program, adoption by the regulatory process is necessary.

In the process a number of changes are being made in order to update regulations as presently published. For example, the provisions which pertain to requiring a loyalty oath are being deleted. Although there was no substantial conflict between the two, the provisions regarding the use of formal advertisement for bids in State and local procurement actions are being deleted and replaced by adoption of the procurement standards of Attachment 0 of OMB Circular A–102.

Actual changes in criteria are not as substantial as the volume of the revised regulations suggests. From the time the first grants were made under this program in 1961, DCPA and its predecessor agencies have provided guidance to States and their political subdivisions not only through formal regulations and published handbooks and directives, but also through person-to-person contact. Such contacts include telephone calls, on-site visits on the part of Federal regional personnel, and conferences and meetings attended by representatives of the Federal, State and local levels of government. Many of the criteria and procedural requirements were adopted as a result of cooperative efforts of various civil defense officials of the State and local governments either in direct contacts with DCPA personnel (e.g., regional meetings of State Civil Defense Directors, and ad hoc conferences) or through representative organizations such as the Council of State Governments and the U.S. Civil Defense Council.

Following issuance of the directives on cost principle and standard administrative requirements for application to grants to State and local governments, DCPA advised the States and participating local governments, through dissemination in manuals (e.g., CPG 1–3) and other publications and directives, regarding the application of these Federal standards. In addition regional field personnel and other DCPA employees have provided specific advice and assistance in matters pertaining to compliance with the criteria. As indicated in 32 CFR 1800.20 civil preparedness guides and circulars contain detailed guidance relative to the criteria and procedures applicable to grants to States under the program covered by the regulations in this part.

It is anticipated that by the time these rules become final the functions involved in the regulations in this part will have been transferred to the Federal Emergency Management Agency and these regulations transferred to the Federal Emergency Management Agency and these regulations transferred to 44 CFR Part 301. Accordingly, the Sections of Part 1807 are being renumbered to include additional digits in order to facilitate the forthcoming amendment.

In consideration of the foregoing, it is proposed that 32 CFR Part 1807 be revised to read as set forth below.

Dated: July 13, 1979.

Bardyl R. Tirana,

Director, Defense Civil Preparedness Agency.

PART 1807—CIVIL DEFENSE STATE AND LOCAL MANAGEMENT PROGRAM (CONTRIBUTIONS FOR PERSONNEL AND ADMINISTRATIVE EXPENSES)

Sec.

1807.001 Purpose.
1807.002 Definitions.
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1807.004 Allocation.
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1807.011 Cost principles.
1807.012 Implementation of OMB Circular A–102.
1807.013 Other Federal requirements.
1807.014 Projects involving construction.

Authority: Sec. 401, Federal Civil Defense Act of 1950, as amended, 64 Stat. 1255, 50 U.S.C. App. 2253; Reorg. Plan No. 1 of 1958, 72 Stat. 1799, 23 FR 4991, E.O. 10952, 26 FR 6577; 29 FR 5017, Apr. 10, 1964; unless otherwise noted.

§ 1807.001 Purpose.

(a) The regulations in this part prescribe the requirements for Federal financial contributions to the States, and, through the States, to their political subdivisions for necessary and essential States and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under with such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative function required in order to accomplish this objective.

§ 1807.002 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their

meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1–3, including without limitation Appendix P which sets forth the "Cost Principles Applicable to Grants and Contracts with State and Local Governments" as promulgated in FMC 74–4.

(c) *Annual submission.* The State's annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1–3, it includes staffing patterns (including job description changes), budget requirements, any amendments to the State administrative plan, a request for funds covering the State and its subgrantees, and if not previously submitted, program papers for the grantee and subgrantees. Program papers may be submitted separately or as part of the annual submission.

(d) *Approval.* All approvals by the grantor agency required under the regulations in this part mean prior approval in writing signed by an authorized official of the grantor agency. When failure to obtain approval prior to an action has not resulted and is not expected to result, in any failure of compliance with a substantive requirement and approval after the fact is not contrary to law or regulation having the effect of law, written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1–3.* Civil Preparedeness Guide entitled "Federal Assistance Handbook" which sets forth detailed guidance on procedures which a State and, where applicable, its political subdivision must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms and conditions upon which financial assistance is granted. Included are amendmentsd by numbered changes and by Civil Preparedness Cireulars issued by the grantor agency as provided in 32 CFR 1800.20 (42 FR 34880). References to CPG 1–3 include provisions of other volumes of the CPG series specifically referenced in CPG 1–3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered from the U.S. Army A.G. Publications Center, Civil Defense Branch, 2800 Eastern Boulevard (Middle River) Baltimore, MD 21220. One or more copies of CPG 1–3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copy of revisions and amendments are distributed to participating governments (addressed to the Civil Defense Director) upon issuance.

(f) *Director.* The Director of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(g) *FMC 74–4.* Federal Management Circular 74–4, "Cost Principles Applicable to Grants and Contracts with State and local Governments", codified in the Code of Federal Regulations at 41 CFR Subpart 1–15–7, including amendments or revisions as published in the **Federal Register.** (See Appendix P of CPG 1–3).

(h) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor agency may be ordered from the U.S. Army A.G. Publication Center, Civil Defense Branch, 2800 Eastern Blvd. (Middle River) Baltimore, MD 21220. For the purposes of the regulations in this part, they include the following:

(1) Program Paper for State Civil Defense, DCPA Form 744–2, Aug. 1977; Local Civil Preparedness Annual Program Paper, DCPA Form 744A, April 1978.

(2) Financial Contribution Request, DCPA Form 234, Aug. 1976; Personnel and Administrative Expenses Summary (State), DCPA Form 234–1, May 1976; Personnel and Administrative Expenses Summary (Local), DCPA Form 234–1A, Jan. 1973.

(3) Staffing Pattern, DCPA Form 751, Sept. 1972.

(4) State and Local Management Expenses Claimed for (Personal and Administrative Expenses) Contributions, DCPA Form 234–3, Aug. 1976.

(5) Billing for State and Local Management Contributions, DCPA Form 380–1, June 1976.

(6) Federal Assistance Application for Construction Programs, DCPA Form 1401, July 1975.

(i) *Grantee.* A State having a State administrative plan, a program paper, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1–3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(j) *Grantor agency.* The Defense Civil Preparedness Agency.

(k) *Host area.* An area identified by a State as having a capacity for accommodating people relocated from a risk area, as well as its own population, during a period of international crisis having high potential for nuclear attack.

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and program papers approved by the Regional Director as being consistent with the national plan for civil defense and as meeting other requirements for civil defense plans prescribed by or under provisions of the Federal Civil Defense Act of 1950, as amended.

(n) *OMB Circular A–102.* Uniform administrative requirements for grants-in-aid to State and local governments, promulgated by the Office of Management and Budget, Executive Office of the President of the United States (42 FR 45828, 9–12–77) including amendments or revisions as published in the **Federal Register.**

(o) *Operational plans.* Operational plans are part of the State administrative plan. They identify the available personnel, equipment, facilities, supplies, and other resources and provide for coordinated operations to be taken throughout the State in the event of an attack.

(p) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1–3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent

covered therefor in a Federally approved indirect cost allocation plan.

(q) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships.

(r) *Program papers.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the grantor agency on its prescribed forms which are available through the Regional Directors. (See paragraph (h)(1) of this section).

(s) *Regional Director.* An official of the grantor agency delegated authority to exercise specified functions under the Act, including certain financial contributions program functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 32 CFR Part 1800, Appendix A.

(t) *Risk area.* An area identified by the grantor agency as one which, in the event of nuclear attack, is relatively more likely to experience direct weapons effects (blast heat and initial radiation) or high fallout without blast effects.

(u) *State.* Any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Government of the Northern Mariana Islands, the territories of American Samoa, Guam, and the Virgin Islands, and interstate civil defense authorities.

(v) *State administrative plan.* A one-time submission with periodic amendments to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules, plans and procedures, including personnel standards administered on a merit basis, operational plans, travel regulations, indirect cost allocation plans, and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A–102 and such other elements as may be required to determine the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1–3. (Also see § 1807.006).

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission as approved by the grantor agency (including any grantor agency approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State.

§ 1807.003 Incorporation of CPG 1–3.

In order to reduce substantially the volume of material published in the **Federal Register** it is considered appropriate to incorporate by reference Chapters One and Two together with Appendices A through Q of CPG 1–3, as amended by Change 1, March 1977; Change 2, October 1977; and Change 3, September 1979. Appendices A through O cover the same subjects as Attachments A through O of OMB Circular A–102, in the same order. Appendix P contains the cost principles prescribed in FMC 74–4. Appendix Q sets forth details regarding merit standards for systems of personnel administration as adopted under § 1807.009

§ 1807.004 Allocation.

(a) The entire amount of the appropriation by the Congress for the purposes of this program for each fiscal year shall be allocated among all the States by the Director. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) Initial discussion with States will begin with the availability of information concerning the amount of funds included for the program in the President's budget request to Congress. For initial planning purposes only, each State will be informed of a preliminary budget allocation figure by the regional Director.

(c) The first calculation for developing the preliminary budget allocation will be a formula distribution made by applying the following criteria:

(1) There shall be established a basic amount which shall be the same for each State: $25,000.

(2) An additional amount shall be calculated for each State by applying the following percentage formula to the total sum in the appropriation request less the total of the basic amounts established for the States:

(i) One-third weight shall be given to the risk areas, which is measured by the ratio of the risk area population of each State to the national total of such population.

(ii) Two-ninths weight shall be given to the criticality of host areas, which is measured by the ratio of the host area population of each State to the national total of such population.

(iii) One-ninth weight shall be given to population, which is measured by the ratio of the total population of each State to the national population.

(iv) One-third weight shall be given to the state of development as follows:

(A) One-sixth weight shall be given to Nuclear Civil Protection (NCP) complexity factor. It is the ratio of the complexity rating of each State to the sum of such ratings for all States. The factor is a number between 1 and 5 assigned to each State; 1 indicating the least complexity and 5 the greatest. The assigned factors represent largely subjective judgment concerning the relative difficulty likely to be experienced in NCP planning due to the geography, the number of projects, the number of evacuees from outside the State that will have to be hosted, the hosting ratio that will have to be used, and the availability or non-availability of fallout shelter space.

(B) One-sixth weight shall be given to the complexity factor in each State (as compared to the sum for all States) of: shelter plans, direction and control, warning, radiological defense, emergency public information, and emergency services expressed as percent of completion, times the population ratio.

(3) The sum of the basic amount and the additional amount for each State shall constitute its formula distribution.

(d) The formula distribution shall be reviewed and evaluated by the Director for the purpose of arriving at the preliminary budget allocation. In making the review and evaluation the Director shall consider the current situation in the State using the following six factors.

(1) The ability of the State and its subgrantees to expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocation which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathmatical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the

national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(6) Any situation where allocation to the State of an amount approximately equivalent to the basic amount would be disproportionate because the State is sparsely populated.

(e) On or about September 1 of each year, the Director will make a tentative allocation to the States including accommodation for funds from States which have indicated they will not be using the total of the preliminary budget allocation. States can then revise their earlier plans which should more nearly reflect the level of funding expected to become available.

(f) By September 30 (or as soon thereafter as feasible) of each year the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds.

§ 1807.005 Reallocation.

(a) In the event a State fails to submit (within sixty days after notification of its formal allocation) an annual submission approvable under the criteria prescribed therefor by the regulations in this part and by CPG 1–3, the Director may reallocate that State's share of the funds or portions thereof among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(b) In addition, the Director may from time to time reallocate the amounts released or withdrawn from any allocation as no longer being required for utilization by the State in accordance with the annual submission or State administrative plan approved by the Regional Director as meeting criteria prescribed by the regulations in this part and by CPG 1–3.

§ 1807.006 State plans and annual submissions.

In order to be eligible for Federal financial contributions under the regulations in this part, each State must have on file with the grantor agency a current State administrative plan for civil defense and an annual submission (including program papers, if not previously submitted) which have been approved by the Regional Director as being consistent with the national plan for civil defense and as meeting the requirements of the regulations in this part and of CPG 1–3.

(a) *State administrative plans.* (1) Regional Directors are not authorized to approve any State administrative plan unless it meets all of the following criteria:

(i) Provides for and is, pursuant to State law, in effect in all political subdivisions of the State, mandatory on them and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), is administered or supervised by a single State agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, rules and regulations, at the State and local level which establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(ii) Provides that the State shall match (50/50) the financial assistance provided by the Federal government under this part with funds from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(iii) Provides for the development of State and local government civil defense operational plans pursuant to the standards approved by the Director.

(iv) Provides for the employment by the State of a full-time civil defense director or deputy director.

(v) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the administration of the civil defense program, at both the State and local government levels in conformity with the Standards for a Merit System of Personnel Administration, (5 CFR Part 900) which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648, § 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

(vi) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(vii) Provides that the State shall make such reports (including without limitation, financial reports) in such form and content as the Director may require.

(viii) Provides that the State and all subgrantees shall retain in accordance with Appendix C of CPG 1–3 (also see Attachment C of OMB Circular A–102) and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(ix) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the Federally prescribed Standards promulgated in Appendix G of CPG 1–3, "Standards for Grantee Financial Management Systems" (also see Attachment G of OMB Circular No. A–102).

(x) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and project performance of the State and its subgrantees which meet the Federally prescribed standards promulgated in Appendix I of CPG 1–3 (also see Attachment I of OMB Circular No. A–102).

(xi) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the Federally prescribed standards set forth in Appendix N of CPG 1–3 (also see Attachment N of OMB Circular No. A–102).

(xii) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with Federally prescribed standards set forth in Appendix O of CPG 1–3 (also see Attachment O of OMB Circular A–102).

(xiii) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1–3.

(xiv) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1–3.

(xv) Contains a Statement of Compliance with grantor agency regulations under Title VI of the Civil Rights Act of 1964 including methods of administration which will be followed in order to conduct the civil defense

program in accordance with Title VI of the Civil Rights Act of 1964 and the grantor agency regulations (see 32 CFR 1811.5(d) and CPG 1–9, "Non-Discrimination in Federally Assisted Programs of the Defense Civil Preparedness Agency").

(xvi) Provides for timely submission, to the appropriate Regional Director, of amendments to the administrative plan as necessary to reflect the current laws, regulations, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(xvii) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1–3.

(2) As a part of its State administrative plan each participating State shall have an emergency operational plan approved by the Regional Director as complying with the criteria therefor set forth in this part and in CPG 1–3, which provides for coordinated actions to be undertaken throughout the State when the attack-caused emergencies occur. Included are the basic operational plans of the State and the operational plans for each department of the State government which has an emergency mission. In addition, each subgrantee shall have a local operational plan which conforms with the criteria therefor set forth in CPG 1–3 and CPG 1–5 "Standards for Local Civil Preparedness" and which has been approved by the chief local executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State's operational plan.

(3) It is not required that the State administrative plan be resubmitted annually. The State shall submit amendments to the State administrative plan as necessary to reflect the current status in accordance with the procedures prescribed in CPG 1–3. Such amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, the changes will have on the continued eligibility of the State and its subgrantees.

(b) *Annual submissions.* In order to participate for a particular Federal fiscal year, each State must, within 60 days of receipt of notice of a formal allocation made pursuant to the criteria set forth in § 1807.004 and in accordance with procedures and criteria specified in CPG 1–3 (including the requirement of a 45-day period for comment by the Governor) submit to the Regional Director an approvable annual submission which includes:

(1) A request, on the forms prescribed by the grantor agency (DCPA Forms 234, Aug. 1976, and 234–1A Jan. 73), for a Federal financial contribution in a specified amount for civil defense personnel and administrative expenses;

(2) Unless previously submitted for the particular Federal fiscal year, program papers on forms prescribed by the grantor agency (DCPA Forms 744–2, Aug. 1977, and 744 A, Apr. 1978) for the State and proposed subgrantees;

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by the grantor agency (DCPA Forms 751, Sep. 1972, and 2341, May 1978) for the civil defense organizations of the State and proposed subgrantees, and

(4) Any amendments to the State administrative plan required to reflect current status.

(c) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1–3, or to reflect changes in the State's administrative structure, procedures, criteria, or activities, unless a portion was conditionally approved by the Regional Director as provided for in paragraph (d) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(d) *Disapproval or conditional approval of State administrative plan or annual submission.* If a State's administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and the grantor agency.

(e) *Appeals.* Appeal from a Regional Director's disapproval of a State administrative plan or an annual submission may be made by letter to the Director, signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 15 days after receipt of the notification of disapproval. Failure to timely file its appeal may result in the State's allocation being withdrawn and the proposed funding reallocated by the Director. Upon receipt of such an appeal the Regional Director shall forthwith forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the State in support of its appeal, to the Director for review and determination. The appeal shall contain all of the exceptions being taken by the State, and no exceptions will be determined piecemeal. No portion of the appellant State's allocation will be reallocated pending determination of its appeal by the Director. The State will be notified in writing of the Director's decision, including a statement of the reasons therefor.

§ 1807.007 Agreement for contributions.

Approval, pursuant to procedures and criteria described in this part and in CPG 1–3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between the grantor agency and the State as grantee for its participation and that of its subgrantees in the programs of Federal financial contributions (50%) for necessary and essential civil defense personnel and administrative expenses during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1–3 and in other Federally promulgated criteria referenced in this part. Refusal or failure to comply with such requirements and conditions may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received. (See § 1807.012(1)(5) and 32 CFR Part 1803).

§ 1807.008 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission, and each amendment thereto, which results in a change in scope (e.g. an increase in the amount of funds other than a cost overrum) must be approved during the Federal fiscal

year for which the funds to be charged were appropriated. Expenses incurred by a State or its subgrantee prior to the availability of the current Federal appropriation to be charged (even though they would have been allowable if incurred thereafter), do not qualify for payment of a Federal financial contribution out of such current appropriation.

§ 1807.009 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR Part 900; 44 FR 10238), which prescribe intergovernmental personnel standards on a merit basis for application, as a condition of eligibility, in the administration of grant programs. OPM has approved the adoption made by the regulations in this part.

(b) *Adoption.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

Methods of personnel administration will be established and maintained in public agencies administering the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR Part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648 Section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 1807.006(a)(1)(i)(v) of this part provides, in part, that State administrative plans which fail to provide for fulfilling this condition are not approvable.

(42 U.S.C. 4728; 5 CFR Part 900; 44 FR 10238.)

§ 1807.010 Use of funds, materials, supplies, equipment and personel.

Financial contributions provided under the authority of Section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1–3, and are obligated only on the basis of documentation justifying such need therefor. In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1–3, for providing emergency assistance, including the use of civil defense personnel, orgnizational equipment, materials, and facilities, in any area of the United States which suffers a disaster other than a disaster caused by enemy attack.

§ 1807.011 Cost principles.

(a) *General.* FMC 74–4 establishes principles and standards for determining costs applicable to grants to State and local governments. The principles are for determining costs only and are not intended to identify the circumstances nor to dictate the extent of Federal or State and local financing of a particular program or project. The principles do not apply to the extent they are restricted or prohibited by law. Attachment A of FMC 74–4 sets forth standards for allowability of particular items of cost. Both attachments of FMC 74–4 are set forth as Appendix P of CPG 1–3. Items of allowable and unallowable costs are listed. In addition, there are listed items of costs for which the prior written consent of the grantor agency is required.

(b) *Types of costs allowable only on approval of the grantor agency.* The types of costs set forth in this paragraph are allowable only upon the approval of the grantor agency. Specific inclusion of such type costs in an indirect cost proposal approved by the responsible Federal agency in accordance with the requirements of FMC 74–4 (Appendix P of CPG 1–3) shall constitute grantor agency approval of such costs as indirect costs, only to the extent that such costs are eligible under criteria contained in the regulations in this part and in CPG 1–3. Approval of such type costs by the grantor agency as direct costs shall be as prescribed in this section. When prior approval on a case basis is required, the determination shall be made by the Regional Director on the basis of the criteria contained in the regulations in this part, CPG 1–3, and the criteria set forth in other federally promulgated regulations referenced in this part.

(1) *Automatic data processing (ADP) equipment.* It is not expected that the civil defense agency of a grantee or subgrantee will have sufficient need of automatic data processing (ADP) equipment to warrant the purchase or rental of ADP equipment for full-time civil defense needs. In requesting approval of the cost ADP service (whether for rental or for depreciation on equipment owned by the grantee or a subgrantee) such costs may be approved only on the basis of a Federally approved cost allocation plan covering such costs.

(2) *Building space and related facilities.*—(i) *General.* The rental cost of space in a privately owned building and depreciation and use allowances on publicly owned buildings are allowable expenses. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space for civil defense use may not be charged to the program covered by the regulations in this part for periods of non-occupancy.

(ii) *Requirements for EOC occupancy.* Under Section 201(i) of the Act, the grantor agency contributes up to one-half of certain costs incurred by a grantee or subgrantee in installing an emergency operating center (EOC) within existing building space or in space being provided by construction of a new building. The grantor agency does not contribute toward the construction of the building except for items necessary to convert a basic shell area into a functioning EOC. One of the requirements for approval of such grant projects is the agreement of the grantee or its subgrantee for regular occupancy of the EOC by its civil defense agency on a daily basis during normal business hours. The grantor agency will not contribute toward the cost of rent, depreciation, or use allowances for civil defense office space if an EOC has been obtained by the grantee or subgrantee, with the assistance of a grant under section 201(i) of the Act or other Federal funding. An exception may be granted by the grantor agency only upon the grantee's demonstration that its occupancy of the particular EOC, or that of its subgrantee, for day-to-day civil defense administration is not feasible (e.g., due to the EOC's being an unreasonable distance from the site of the State or local department of which civil defense is a part and/or that the EOC does not have sufficient capacity to accommodate the civil defense agency for its daily functions.)

(iii) *Depreciation and use allowances.* Depreciation and use allowances, in lieu of depreciation, for use of publicly owned buildings are allowable expenses. The computation of depreciation and use allowances will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal government through charges to

Federal grant programs or otherwise. For example, in arriving at the cost of occupancy of EOC space by a grantee's or subgrantee's civil defense agency, the portion of the space covered by the EOC contribution shall be excluded. Except to the extent the grantee or subgrantee, as the case may be, can document that the charge is not based upon costs covered by the EOC contribution, no contribution will be made under the program covered by the regulations in this part for depreciation, or a use allowance for space in an EOC.

(3) *Capital expenditures.* The cost of rearrangement and alteration of office space, furniture, furnishings, office equipment, other capital assets, and repairs which materially increase the value of useful life of capital assets is an allowable expense. When assets acquired with Federal grant funds are:

(i) Sold,

(ii) No longer available for use in a federally sponsored program, or

(iii) Used for purposes not authorized by the grantor agency, the grantor agency's one-half interest in the fair market value of the asset will be refunded. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable. (See Appendix N of CPG 1–3 and Attachment N of OMB Circular A–102). Specific approval of the grantor agency, on a case basis is required for construction projects. (See paragraph (m) of §§ 1807.012 and 1807.014.

(4) *Insurance and indemnification.* In addition to employees' benefits in the form of the grantee's or subgrantee's payments as employer toward social security, employees' life and health insurance plans, unemployment insurance, and workmen's compensation insurance, the cost of other insurance in connection with the general conduct of civil defense activities is allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal government property is unallowable except to the extent that the grantor agency has specifically required or approved such costs on a case basis. Contributions to a reserve for a self-insurance program approved by the grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rate and premiums would have been allowed had insurance been purchased to cover the risks. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable. For example, the grantor agency will not contribute toward securing the grantee or subgrantee against libilities to third persons and other losses not compensated by insurance or an approved self-insurance program or otherwise. Minor losses not covered by insurance, such as breakage and disappearance of small hand tools and office items and supplies which occur in the ordinary course of civil defense program administration will be accommodated by a contribution toward the cost of replacement or repair of the missing or damaged item.

(5) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not othewise included in rental or other charges for space.

(6) *Management studies.* The cost of management studies to improve the effectiveness and efficiency of management for ongoing civil defense programs is an allowable expense except that the cost of studies performed by agencies other than the grantee's or subgrantee's civil defense office or outside consultants is allowable only when and as approved on a case basis by the grantor agency.

(7) *Professional services.* The cost of professional services rendered by individuals or organizations not a part of the grantee's or subgrantee's civil defense department is an allowable expense only when and as approved on a case basis by the grantor agency.

(8) *Proposal costs.* Cost of preparing proposals on potential civil defense grant projects are allowable.

§ 1807.012 Implemenstation of OMB Circular A–102.

This section implements OMB circular A–102. The circular shall be complied with unless an exception is specifically referred to in this part or is otherwise clearly discernible from the text. The provisions prescribed by attachments to the Circular are contained in the Appendices to CPG 1–3 and are incorporated by reference in the regulations contained in this part.

(a) *Cash depositories*—(1) *Advanced funds.* Attachment A of OMB Cirular A–102 (Appendix A of CPG 1–3) sets forth standards governing the use of banks and other institutions as depositories of funds advanced under grants. (See § 1807.012(j) on grant payments). Under the standards, moneys advanced by letter-of-credit to a grantee for its own use or for an advance to a subgrantee must be deposited in a separate account and, regardless of the use of the letter-of-credit procedure, moneys advanced must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

(2) *Minority owned banks.* Consistent with the national goal of expanding the opportunties for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 per cent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230.

(b) *Bonding and insurance.* Attachment B of OMB Circular A–102 (Appendix B of CPG 1–3) sets forth bonding and insurance requirements for grants. They pertain to contracting and to subcontracting by a grantee or subgrantee for construction or facility improvements. The grantee or subgrantee may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000, in which case the grantee shall request approval for use of its own or subgrantee's requirements to adequately protect the Federal government's interest. The minimum requirements shall include a bid guarantee from each bidder equivalent to five percent of the bid price and a performance bond on the part of the contractor for 100 percent of the contract price. Where bonds are required, they shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

(c) *Retention and custodial requirements for records.* Attachment C of OMB Circular A–102 (Apendix C of CPG 1–3) sets forth records retention requirements for grants. The basic requirements are discussed in this paragraph (c) and subparagraphs (1) through (4). Financial records, statistial records, personnel records (including merit system administration), procurement records and all other books, papers, records, and supporting documentation pertinent to the grant shall be retained by the grantee and, as to any subgrant, by the subgrantee, for a period of three years, with the following qualifications:

(1) The retention period starts from the date of submission of the fiscal billing.

(2) If any audit, claim, investigation, or litigation is started before expiration of the three-year period, the retention requirement shall not expire until the grantee is notified by the grantor agency that all such matters have been resolved and that the grantee may dispose of the records.

(3) Upon request of the granter agency for certain records, the grantee will deliver the requested records and documentation to the grantor agency for long-term retention. In case the grantee still has a need for such records, arrangements will be made for copies, including microfilm copying is so desired.

(4) The head of the grantor agency and the Comptroller General of the United States or any of their duly authority representatives shall have access to any pertinent books, documents, papers and records of any grantee or subgrantee in order to make audits, examinations, excerpts and transcripts.

(d) *Waiver of "single" State agency requirements.* Section 205 of the Act requires plans for civil defense of the United States shall be administered or supervised by a single State agency (50 U.S.C. App 2286). Notwithstanding such law, Section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency upon the State's request to waive the single State agency requirement, and approve other State administrative structure or arrangements upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. App 2251–2297) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A–102 (Appendix D of CPG 1–3) requires that such requests shall be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response shall be made.

(e) *Program income.* Attachment E of OMB Circular A–102 (Appendix E of CPG 1–3) requires the application by the grantor agency of the standards set forth therein in requiring grantees to account for program income. With the exception of interest earned on advances and proceeds from the sale of property furnished the Federal government or purchased in whole or in part with Federal funds, gross income (such as service fees, sale of commodities, usage or rental fees) earned by the grantee or a subgrantee from activities supported under the grant program in this part shall be

(1) Added to funds committed to the program by the grantor agency and the grantee or subgrantee and shall be used to further civil defense program objectives, or

(2) Upon specific written approval by the grantor agency may be used to finance the non-Federal share of allowable civil defense costs. Grantee and subgrantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant program transactions when such revenues are earmarked for its civil defense program. Any interest earned by a subgrantee on advances of Federal funds under the program in this part shall be remitted to the grantor agency. Proceeds from the sale of property, either furnished by the Federal government or procured in whole or in part with Federal funds shall be handled in accordance with Attachment N of OMB Circular A–102, "Property Management standards" (Appendix N of CPG 1–3).

(f) *Matching share.* Attachment F of OMB Circular A–102 (Appendix F of CPG 1–3) sets forth criteria and procedures for the allowability of cash and in-kind contributions made by grantees, subgrantees or third parties in satisfying cost sharing and matching requirements of the grantor agency. The provisions of subparagraphs (1) through (4) of this paragraph are in accord with the criteria and apply as an interpretation of some of the standards of Attachment F of OMB Circular A–102 (Appendix F of CPG 1–3) with respect to their application to the program covered under the regulations in this part:

(1) *Equal matching.* Federal funds provided pursuant to the regulations in this part must be equally matched by the grantee for any non-Federal source determined by the grantee to be consistent with State law. When authorized by Federal statute, Federal funds received from other grants may qualify for use as the grantee's contribution.

(2) *Land.* The value of any land contributed by any grantee or subgrantee (regardless of source) shall be excluded from the grantee's share.

(3) *In-kind contributions.* In-kind contributions repesent the value of non-cash contributions provided by the grantee, its subgrantees or other non-Federal parties. They may be in the form of charges for goods and services directly benefitting and specifically identifiable to the administration of the State and local civil defense program. Values for in-kind contributions will be established at the grantee's actual cost in accordance with FMC 74–4 and Attachment F of OMB Circular A–102 (Appendix F of CPG 1–3).

(4) *Computation.* All costs, whether attributable to cash outlays by the grantee or to in-kind contributions must be attributable to the administration of the civil defense program during the Federal fiscal year to be charged. That is not to say that in all cases the grantee or subgrantee must have made the cash outlay (or received a donation from non-Federal sources) during the grant period. For example, depreciation or use charges may be claimed for the use during the grant period of space in a building which was donated to or procured by the grantee or a subgrantee prior to the Federal fiscal year covered by the grant period. In order to be acceptable as part of the grantee's matching share, costs must meet the following requirements:

(i) Be verifiable from the grantee's records, together with those of any subgrantee;

(ii) Not be included as a contribution under any other Federally-assisted program;

(iii) Fall within the definition of necessary and essential civil defense expenses set forth in paragraph (m) of § 1807.002.

(iv) Be a type of cost allowable under the provisions of FMC 74–4;

(v) Be within the grantee's budget submission approved as a part of its annual submission;

(vi) Conform to the requirements of OMB Circular A–102, CPG 1–3, and provisions of the grantor agency's regulations in Title 32 of the Code of Federal Regulations.

(g) *Standards for grantee financial management systems.* (1) Attachment G of OMB Circular A–102 (Appendix G of CPG 1–3) prescribes standards for grantee's financial management systems. Basic provisions are set forth as paragraph (g)(2) to this section, but for additional details and requirements reference must be made to Attachment G of OMB Circular A–102 (Appendix G of CPG 1–3). Grantees shall require subgrantees to adopt the standards. In the case of subgrantees, reports shall be made through the grantee as a part of its reports.

(2) Grantees and subgrantees must maintain a financial management system which provides for the following:

(i) Accurate, current, and complete disclosure of the financial results of each grant made under the Act in accordance with the reporting

requirements set forth in Attachment H of OMB Circular A–102 (Appendix H of CPG 1–3). (Also see paragraph (h) of § 1807.012).

(ii) Records that identify adequately the source and application of funds for grant-supported activities, including information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

(iii) Effective control over and accountability for all funds, property, and other assets. Grantees and subgrantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(iv) Comparison of actual outlays with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

(v) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements.

(vi) Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of FMC 74–4.

(vii) Accounting records that are supported by source documentation.

(viii) Examinations in the form of audits or internal audits. Such audits should be made in accordance with generally accepted auditing standards including the standards published by the U.S. General Accounting Office, "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions". In addition, the examinations must comply with the requirements set forth in Attachment G of OMB Circular A–102 (Appendix G of CPG 1–3).

(ix) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(h) *Financial reporting requirements.* Attachment H of OMB Circular A–102 (Appendix H of CPG 1–3) prescribes uniform reporting procedures for grantees. Grantees are required to use the standardized Financial Status Report prescribed by the Office of Management and Budget (Approval No. 80–R0180) in Attachment H to OMB Circular A–102 (Appendix H of CPG 1–3) to report on the cash basis the status of funds for all nonconstruction projects and programs. The Financial Status Report shall be submitted to cover a complete Federal fiscal year within ninety days after the end thereof (by December 29th). Extensions to this reporting due date may be permitted by the grantor agency upon a showing of need therefor by the grantee. For the complete requirements, grantees are referred to Attachment H of OMB Circular A–102 (Appendix H of CPG–1–3).

(i) *Monitoring and reporting program performance.* Attachment I of OMB Circular A–102 (Appendix I of CPG 1–3) prescribes procedures for monitoring and reporting program performance under Federal grants.

(1) *Monitoring.* In order to assure that performance goals are being met, each grantee shall constantly monitor its performance and that of its subgrantees and in addition, each subgrantee shall monitor its own performance as to each program, function and activity as set forth in the approved program papers.

(2) *Reporting.* Performance reports shall be submitted to grantor agency in the form, content and within the time frames set forth therefor in CPG 1–3. The CPG 1–3 provisions are in accordance with the requirements of Attachment I of OMB Circular A–102 (Appendix I of CPG 1–3). Performance reports shall briefly present the following:

(i) A comparison of actual accomplishments to the goals established for the Federal fiscal year involved; (where the output can be readily quantified, such quantitative data should be related to cost data for computation of unit costs).

(ii) If established goals were not met, the reasons for such failure;

(iii) Any other pertinent information, including, when appropriate, an analysis and explanation of cost overruns or high unit costs.

(3) *Unexpected developments.* Between performance reporting dates, events may occur which have significant impact upon the programs, or a particular project thereof. In such case, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(4) *Budget revision.* If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K of OMB Circular A–102 (Appendix K of CPG 1–3), the grantee shall submit a request for budget revision. (Also see paragraph (k) of this section).

(j) *Grant payment requirements.* Attachment J of OMB Circular A–102 (Appendix J of CPG 1–3) establishes required methods of making payments to grantees. Grant payments are made to grantees through an advance by Treasury check (before payments are made by the grantee) by letter-of-credit, or through reimbursement by Treasury check. Procedures have been promulgated by the grantor agency in CPG 1–3 in accordance with requirements of OMB Circular A–102 and requirements of the U.S. Department of Treasury.

(1) *Advances.* In order to qualify for an advance the grantee must demonstrate:

(i) Its willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds to the grantee and their disbursement for payment of obligations of the grantee or subgrantee; and

(ii) That its financial management system meets the standards for fund control and accountability prescribed in Appendix G of CPG 1–3 (Attachment G of OMB Circular A–102). Advanced funds must be separately identified and properly accounted for as Federal funds in the fund accounts of the grantee, and, where applicable, its subgrantees. Advances made by a grantee to a subgrantee shall conform to the same standards as provided in this part and in the grantor agency procedures for advances to the grantee. The requirements prescribed or referenced in this part regarding records retention and access for audit and examination pertaining to contributions apply also to books, documents, papers, and records pertinent to an advance of Federal funds. Neither the grantee nor any of its subgrantees shall accumulate Federal funds beyond the amounts needed for immediate disbursement. Unlike the grantee, subgrantees are required to return to the Federal government any interest earned on advances. Proper use of the advance procedure should preclude the accrual of interest on funds drawn by any grantee or subgrantee.

Failure to observe the time and amount limitations on drawdowns or to meet the reporting requirements established by the grantor agency may result in revocation of the unobligated portion of any letter-of-credit or denial of subsequent requests for an advance, or both.

(A) *Advances by letter-of-credit.* A grantee with an approved Federal funding request of $120,000 or more and meeting the requirements for an advance, for the Federal fiscal year may obtain cash advances of Federal contributions only by drawing payment vouchers against letters-of-credit in accordance with procedures established by the grantor agency. Each drawdown on a letter-of-credit shall be initiated at approximately the same time that the recipient grantee or its subgrantee is to disburse its funds in payment of eligible civil defense personnel and administrative expenses and shall be in amount not greater than that required to cover the Federal share of such imminent disbursement. A separate account in a bank with Federal Deposit Insurance coverage with the balance exceeding the FDIC coverage being collaterally secured is required in order for the grantee to draw on the U.S. Treasury when the grantee's checks are presented to its bank for payment. In order to be consistent with the national goal of expanding opportunities for minority business enterprises, it is requested that grantees and subgrantees use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230. Procedures for advances by letter-of-credit are prescribed in Chapter Two of CPG 1–3 and in the grantor agency's manual entitled "Letter of Credit Procedures".

(B) *Advances by Treasury check.* Provided it meets the requirements for an advance, a grantee whose approved Federal funding for the fiscal year is not sufficient in amount to qualify for use of the letter-of-credit process or an insular area receiving consolidated grant under the provisions of Part 1804 of this title may obtain advance payments by Treasury check either upon specific request or under predetermined payment schedules. Procedures for advances by Treasury check are prescribed in Chapter Two of CPG 1–3.

(2) *Reimbursement by Treasury check.* Procedures for reimbursement are prescribed in Chapter Two of CPG 1–3. Payment will be made within thirty days of receipt of each quarterly billing, unless the billing contains unallowable items or is otherwise improper.

(3) *Withholding payment.* When, after reasonable notice and opportunity for hearing the Director finds that there is a failure to expend funds in accordance with the regulations in this part, or other regulations, terms, and conditions established by or under the Act for approved civil defense plans, programs, or projects, the grantee will be notified that further payments will not be made to the grantee from appropriations under the Act (or from funds otherwise available for the purposes of the Act for any approved plan, program, or project with respect to which there is failure to comply) until the Director is satisfied that there will no longer be any such failure. Until so satisfied, the Director shall either withhold the payment of any financial contribution to such grantee or limit payments to those projects or programs with respect to which there is substantial compliance. Procedures for such withholding of payments, including notice and hearing, are set forth in Part 1803 of this title.

(k) *Budget revision procedures.* The procedures set forth in this paragraph, and as detailed in CPG 1–3, are in accordance with the requirements of attachment K of OMB Circular A–102 (Appendix K of CPG 1–3). The grant budget as used in this part means the grantee's financial plan, covering it and all subgrantees for both the Federal and non-Federal share) to carry out the program covered in this part, as approved in the grantee's annual submission. Funding requested for projects involving construction in excess of $2,000 must be separately identified. No transfer may be permitted which would cause any Federal appropriation or part thereof to be used for purposes other than those intended.

(1) *Nonconstruction objectives.* The grantee shall request prior approval by the grantor agency when there is reason to believe that a revision will be necessary for one of the following reasons:

(i) Changes in the scope or the objective of the grant-supported program.

(ii) The need for additional Federal funding.

(iii) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(iv) The addition of items requiring approval in accordance with the provisions of FMC 74–4.

(v) The grantee or a subgrantee plans to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

(vi) The Federal share of the grantee's budget exceeds $100,000 and the cumulative amount transferred for the then current Federal fiscal year exceeds or is expected to exceed five percent of the total approved budget for the program.

(2) *Construction grants.* When construction work in excess of $2,000 is to be covered under the program in this part, a separate approval must be submitted on grantor agency project application forms (construction) meeting the requirements of Appendix M of CPG 1–3 (Attachment M of OMB Circular A–102). No amounts may be transferred from a nonconstruction budget account to a construction budget account, or vice versa, without the prior approval of the grantor agency. In addition, the grantee shall request prior approval by the grantor agency whenever the revision results from changes in the scope or objective of the project.

(3) *Notification of excess funds.* The grantee shall notify the grantor agency promptly whenever the amount of its allocation is expected to exceed its actual needs (including those of subgrantees) by more than $5,000 or five percent (5%) of its allocation, whichever is greater.

(4) *Forms and procedures.* Approval for budget revisions shall be requested on the budget forms (DCPA Forms 234, 234–1, and 234–1A) used in the grantee's annual submission unless the revision involves construction in excess of $2,000 (see paragraph (k)(2) of this section). Within thirty (30) days of receipt of the request for budget revision, the grantor agency will review the request and notify the grantee of the grantor agency's decision, or as to the date a decision may be expected. In order to assure compliance with fiscal year limitations, requests should be submitted in time for receipt by the grantor agency at least 30 days prior to the end of the then current Federal fiscal year.

(l) *Grant closeout procedures.* Attachment L of OMB Circular A–102 (Appendix L of CPG 1–3) prescribes uniform closeout procedures for grantees. The procedures as set forth in this paragraph and as detailed in CPG 1–3 are in accordance with the requirements of Attachment L of OMB Circular A–102 (Appendix L of CPG 1–3).

(1) *Fiscal period.* Grants under the regulations in this part are made on a Federal fiscal year basis and run from October 1 of the calendar year in which the appropriation is allocated to September 30 of the following calendar year.

(2) *Billings.* Grantees, shall submit billings on grantor agency prescribed forms within thirty (30) days after the end of the Federal fiscal quarter. If the grantee has received an advance of Federal funds for itself or any subgrantee, the billing will be applied against the outstanding advance. The grantee shall immediately refund any balance of unobligated (unencumbered) cash advanced to the grantee (including sums advanced to a subgrantee). The grantor agency will make prompt payment to the grantee for remaining allowable, reimbursable costs due under the grant.

(3) *Reports.* Unless an extension has been given in writing by the grantor agency, the grantee shall submit, within ninety days of the end of the grant period (i.e., by December 30) all financial, performance, and other reports required under the terms of the grant.

(4) *Property.* The grantee shall account for property acquired with the assistance of grant funds in accordance with the provisions of Appendix L of CPG 1–3 (Attachment N of OMB Circular A–102). Thus the grantee shall report to the grantor agency on each instance of the following:

(i) Any proposed non-civil defense use or any disposal proposed to be made of property acquired with the assistance of grant funds under the program covered in this part,

(ii) As to any subgrantee which will not be participating in the program for the balance of the current Federal fiscal year or succeeding Federal fiscal year, and,

(iii) In addition, a report as to such property obtained by the grantee in the event the grantee is not participating for the new Federal fiscal year.

(5) *Termination for cause.* The Director may terminate any grant in whole or in part, at any time prior to the end of the then current Federal fiscal year, whenever it is determined that the grantee has failed to comply with the conditions of the grant. When, after reasonable notice and opportunity for hearing to the grantee (or to the grantee and its subgrantee, as the case may be) the Director finds that there is a failure to expend funds in accordance with the regulations in this part, or other regulations, terms, and conditions established by or under the Act for approved civil defense plans, programs, or projects, he will notify the grantee (or the grantee and its subgrantee, as the case may be) that further payments will not be made for the grantee or any or all subgrantees from appropriations under the Act (or from funds otherwise available for the purposes of the Act for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure. Until he is so satisfied, the Director shall either withhold the payment of any financial contributions to such grantee (for it or any or all subgrantees) or limit payments to those projects or programs with respect to which there is substantial compliance. The procedures for notices, hearings, and the withholding of financial contributions by the Director shall be as prescribed in the regulations of the grantor agency appearing at 32 CFR Part 1803.

(m) *Standard forms for applying for federal assistance.* The program covered in this part is a formula grant program, rather than one for which grants are obtained on a project basis, and basically not subject to the requirements of Attachment M of OMB Circular A–107 (Appendix M of CPG 1–3). However, in the event a grantee on its own behalf or that of a subgrantee, seeks to apply Federal funds provided under the program covered in this part toward the cost of a project involving construction in excess of $2,000; approval of the project is to be requested from the Regional Director, on a form, prescribed by the grantor agency for applications for Federal Assistance for Construction Programs which meets the requirements of Appendix M of CPG 1–3 (Attachment M of OMB Circular A–102). For information regarding various Federal requirements applicable by reason of the construction phase of a project see § 1807.014 and 32 CFR Parts 1808 and 1812.

(n) *Property management standards*—(1) *General.* Attachment N of OMB Circular A–102 (Appendix N of CPG 1–3) prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds. These standards must be observed by all grantees and subgrantees with regard to all nonexpendable property acquired with the assistance of Federal funds provided under the program covered in this part. Grantees and subgrantees may use their own property management standards and procedures provided that they include the provisions set forth in Appendix N of CPG 1–3. (Attachment N of OMB Circular A–102).

(2) *Summary.*—(i) *Use and disposal.* Included are requirements that tangible nonexpendable personal property acquired by a grantee or subgrantee with the assistance of a Federal financial contribution shall be used by the grantee or subgrantee in the grant program for which it was acquired as long as needed therefor, then for other activities sponsored by the grantor or another Federal agency. Also, when no longer needed for any such purposes, the property may be used or disposed of only as specified by the grantor agency in accordance with the federally prescribed management standards which include provisions for payment of compensation to the grantor agency for its portion of the fair market value of the property. The federally prescribed standards also provide for disposal or nonrestrictive use, upon payment for the Federal share of the fair market value, of property no longer needed for Federal or federally assisted program use.

(ii) *Procedural requirements.* Included without limitation are the procedural requirements set forth in this paragraph.

(A) *Property records.* Accurate property records must be maintained which will identify (including manufacturer's serial number or other identifying number where appropriate) the property obtained from or with the assistance of the Federal Government and details regarding any disposition. The records must also show the program or project for which the property was required; the location, use being made, condition of the property and the date the information was reported.

(B) *Inventory.* A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Quantity discrepancies shall be investigated and fully documented. The grantee, or subgrantee as the case may be, shall, in connection with the inventory, verify the existence, current use, and continued need for the property.

(C) *Control system.* A control system shall be in effect to insure adequate safeguards to prevent the loss, damage, or theft of the property. Any loss, damage, or theft of a property shall be investigated and fully documented. Each suspected theft shall be reported to the appropriate police authority.

(D) *Maintenance.* Adequate maintenance procedures shall be implemented to keep the property in good condition.

(E) *Disposal by sale.* Where the grantee or a subgrantee is authorized or required to sell an item of property, proper sale procedures shall be established to provide competition and to assure the highest return.

(o) *Procurement standards.*—(1) *General.* Attachment O of OMB Circular A–102 (Appendix O of CPG 1–3) provides standards for use by grantees

in establishing procedures for the procurement of supplies, equipment, construction, and other services with the assistance of Federal grant funds. The standards are applicable to grantees and subgrantees under the program covered in this part.

(2) *Summary.*—(i) *Grantee's rules.* Grantees and subgrantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with the assistance of Federal financial contributions adhere to the standards set forth in Appendix O of CPG 1–3 (Attachment O of OMB Circular A–102). The Federally prescribed standards do not relieve the grantee or subgrantee of contractual responsibilities arising under its contracts. The Federally prescribed standards include among others, provisions requiring standards of conduct, open and free competition, and minimum procurement procedures.

(ii) *Procedures.* The minimum procedures must contain requirements regarding review by officials, invitations for bids, request for proposals, utilization of small businesses and minority owned businesses, procuring instruments, formal advertising, negotiated procurement, and contract administration.

(iii) *Contract provisions.* Standards regarding contractual provisions and conditions include requirements such as termination clauses, EEO clauses and bid provisions (in accordance with E.O. 11246, E.O. 11375 and U.S. Department of Labor regulations at 41 CFR Parts 60–1 and 60–4), requirements for availability of contractor's records, clauses regarding rights to inventions, and agreement to comply with the Clean Air Act, where applicable.

(iv) *Clauses for construction and repair contracts.* Requirements include the provisions for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by U.S. Department of Labor regulations appearing at 29 CFR Part 3. Construction contracts, awarded under the program covered in this part, which exceed $2,000 shall include the labor standards clause set forth in Part 1808 of this title. (Also see 29 CFR Part 5.) This clause includes a provision for compliance with Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) pertaining to overtime. Such contracts, and any other Federally assisted contracts in excess of $2,500 involving the employment of laborers and mechanics, shall include provisions for compliance with section 107 (as well as section 103) of the Work Hours and Safety Standards Act, which prohibit contractors and subcontractors from requiring any laborer or mechanic to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to his/her health or safety as determined under standards promulgated by regulations of the U.S. Secretary of Labor. (Also see § 1807.014 and 32 CFR Part 1812.)

§ 1807.013 Other Federal requirements.

By submission of a request for Federal financial assistance under the program covered in this part, each grantee, on its own behalf and that of its subgrantees, agrees as a condition of the grant to comply with the Federally approved requirements and proscriptions set forth in this section. Refusal or failure to comply may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(a) *Archeological and historic sites.* Each grantee and subgrantee shall assist the grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a–1 et seq.). Without limitation, activities by each grantee in this regard include:

(1) Consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800) by the activity, and notifying the grantor agency of the existence of any such properties; and

(2) Complying with all requirements established by the grantor agency to avoid or mitigate adverse effects upon such properties.

(b) *Environmental protection.* Each grantee and subgrantee shall insure that the facilities under its ownership, lease or supervision which are to be utilized in the accomplishment of the programs covered in this part are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and shall notify the grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

(c) *Flood insurance.* Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93–234, 87 Stat. 975, approved December 31, 1973, requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified as a special flood hazard area. Costs are not allowable for acquisition or construction, reconstruction, repair or improvement of a building, or for the acquisition or repair of personal prroperty in a building which is located in an identified special flood hazard area unless the assisted property is covered by flood insurance up to the full value of the property or the limit of available flood insurance coverage, whichever is less. Identified special flood hazard areas are areas having special flood hazards as identified by the Federal Emergency Management Agency and published in the **Federal Register.**

(d) *Handicap.* Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as amended by Pub. L. 93–516) prohibits discrimination on the basis of handicap in any programs or activities receiving Federal financial assistance.

(e) *Hatch Act.* (5 U.S.C. 1501 et seq.) The Hatch Act prohibits covered State and local officers and employees from engaging in the following activities:

(1) The use of official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office;

(2) Directly or indirectly coercing or attempting to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose; or

(3) Be a candidate for elective public office in a partisan election. An officer or employee of a grantee or subgrantee agency is subject to the Hatch Act if, as a normal and foreseeable incident to his/her principal job or position, he/she performs duties in connection with an activity financed in whole or in part by Federal loans or grants. Certain exceptions are provided both as to types of employment and types of office or candidacy. Grantees and subgrantees must insure compliance on the part of covered employees. The penalty for a violation is removal from employment and a bar on employment in a State or local agency within the same State for a period of 18 months. Failure of a State or local agency to comply may result in withholding of Federal grants up to an amount equal to two years' pay of the employee (see 5 CFR Part 151).

(f) *Nondiscrimination.* (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.) provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (See grantor agency regulations at 32 CFR Part 1811 and CPG 1–10.)

(2) The Age Discrimination Act (42 U.S.C. 6101–7) provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

(g) *Relocation assistance.* The Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (Pub. L. 91–646) applies to those federally assisted programs or projects conducted by a grantee or its subgrantee which involve the acquisition of real property or cause the displacement of people, businesses, or farm operations. With regard to the requirements applying, it is immaterial whether Federal funds are applied to the cost of the real property. Each grantee and subgrantee agrees not to proceed with any phase of a project which will cause the displacement of any individual, partnership, corporation, or association or the acquisition of any real property without first providing the grantor agency a satisfactory assurance, as required by sections 210 and 305 of Pub. L. 91–646 that fair and reasonable relocation payments and assistance shall be provided to or for displacing persons as required to be provided by a Federal agency under sections 202, 203, and 204 of Pub. L. 91–646, and that within a reasonable period of time prior to displacements, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with Section 205 of Pub. L. 91–646.

§ 1807.014 Projects involving construction.

(a) *Procedures.* In the event a grantee or subgrantee is to apply any portion of the Federal funds provided under the program in this part toward the cost of a project involving construction in excess of $2,000 the grantee must obtain the prior approval of the Regional Director on construction project application forms. (See paragraph (m) of § 1807.012.)

(b) *Additional Federal requirements.* As a condition to allowability under the program in this part, of any portion of the cost of a project involving construction, a number of additional Federal requirements may apply. The major categories of requirements and proscriptions are set forth in this section. Additional information is contained in 32 CFR Part 1812, CPG 1–3, and in regulations of various other Federal agencies which administer the specific standards and requirements—as referenced in the regulations in this part, in 32 CFR Part 1812, and in CPG 1–3. Refusal or failure to comply may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received. (See § 1807.007 and subparagraphs (1) and (5) of § 1807.012 of this part, and 32 CFR Part 1803.)

(1) *Accessibility by the physically handicapped.* In undertaking projects for new facilities, and for renovation to the extent they can be implemented in the area to be renovated, with the use of Federal funds provided under the program covered in this part, each grantee and subgrantee shall provide for making the facilities accessible to and usable by the physically handicapped. The requirements are contained in General Services Administration (GSA) regulations appearing at 41 CFR Subpart 101–17.5, issued under authority of the Architectural Barriers Act of 1968 (Pub. L. 90–480).

(2) *Equal employment opportunity.* The grantee or its subgrantee, as the case may be, shall incorporate the federally prescribed equal employment opportunity (EEO) clause set forth at 41 CFR 60–1.4(b) into any contract for construction work or modification that is paid for with the assistance of Federal funds furnished under the program covered in this part. In addition, the grantee and subgrantee, where applicable, shall:

(i) Be bound by the clause with respect to its own employment practices when it participates in federally assisted construction work. The clause is applicable only to State and local departments that participate in the work under the contract,

(ii) Affirmatively cooperate with and assist the U.S. Department of Labor in obtaining the compliance of contractors and subcontractors. The grantee must furnish either the grantor agency or the Office of Federal Contract Compliance Programs (OFCCP) with any information that either agency may require for the supervision of such compliance.

(iii) Refrain from entering into any contract or contract modification with a contractor who has been determined by the Federal government to be ineligible for any further Federal contracting or contract bidding or who has not otherwise demonstrated eligibility for government contracts and federally assisted construction contracts.

(iv) Carry out such sanctions and penalties for violations of the equal opportunity clause as may be imposed upon contractors and subcontractors by the grantor agency or the U.S. Secretary of Labor.

(3) *Labor standards*—(i) *Wage rates (Davis-Bacon Act).* The obligations of each grantee include ensuring that every contract let by a grantee or subgrantee which involves construction in excess of $2,000 and which is funded in part from Federal funds provided under the program covered in this part, shall include as a part thereof the labor standards provisions, in completed form, set forth at 32 CFR 1808.4 (also see 29 CFR 5.5) and shall have attached thereto the applicable wage determination of the U.S. Secretary of Labor (see 29 CFR Part 1). Each advertisement of an invitation to bid shall indicate expressly that if the construction phase of the contract exceeds $2,000, the Davis-Bacon Act requirements apply and the grantee or subgrantee shall place a copy of the current prevailing wage determination issued by the U.S. Secretary of Labor in each solicitation and the award of the contract shall be conditioned upon acceptance of the wage determination (see 32 CFR 1808.3 and Appendix 0 of CPG 1–3).

(ii) *Work hours and overtime.* The work hours and overtime provisions of the Work Hours and Safety Standards Act of 1962 as amended (40 U.S.C. 327 et seq.) and the Federal regulations issued thereunder (29 CFR Part 5) apply to contracts and subcontracts involving the employment of laborers and mechanics which are assisted by Federal funds provided under the program covered in this part. The provisions prescribe an eight-hour work day, a 40-hour work week and "time and half" for overtime. The grantor agency may withhold funds from the grantee in an amount sufficient to pay the amount of any unpaid wages and liquidated damages determined to be due under the provisions of the statute.

(iii) *Anti-kickback.* The Copeland Act, 18 U.S.C. 874, 40 U.S.C. 270c and the regulations issued thereunder (29 CFR 3.1 et seq.) apply to the construction or repair of a building or work financed in part under the program covered in this part. It provides procedures for submission by contractors and subcontractors of weekly payroll statements and permissible deductions from wages. It also prescribes a criminal

penalty for including an employee to make a kickback.

(iv) *Safety standards.* The stafety standards provisions of the Contract Work Hours and Safety Standards Act as amended (40 U.S.C. 327 et seq.) and the regulations issued thereunder (29 CFR Part 1926) apply to each contract entered into by a grantee or subgrantee for construction, alteration, and/or repair, including painting and decorating which is financed in part with Federal funding provided under the program covered in this part. Each such contract must provide as a condition thereof that no contractor or subcontractor for any part of the work shall require any laborer or mechanic engaged in the performance of the contract to work in any place, or under any working conditions which are unsanitary, hazardous or dangerous to health and safety.

(v) *Convict labor.* With the exception of labor performed by convicts who are on parole, probation, or an approved work training program meeting the requirements of Executive Order No. 11755, dated December 28, 1973 (39 FR 779), convict labor shall not be used on construction performed with the assistance of Federal funds furnished under the program covered in this part.

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Thursday
July 19, 1979

Part VIII

Department of Interior

Bureau of Land Management

Coal Management; Federally Owned Coal

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 221, 3400, 3410, 3420, 3422, 3430, 3440, 3450, 3460, 3470, 3500, 3501, 3502, 3503, 3504, 3507, 3511, 3520, 3521, 3524, 3525, 3526, 3550, 3564, 3565, 3566, and 3568

[Circular No. 2449]

Coal Management; Federally Owned Coal

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The rulemaking sets out the procedures the Secretary of the Interior will use in carrying out the authority to manage Federally-owned coal through leasing or exchange provided by the Mineral Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands, as amended, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and reclamation Act of 1977, the Multiple Mineral Development Act, and other related Acts. These procedures are to be carried out in a manner that will meet the nation's need for coal from Federal lands and afford protection for the environment.

DATES: Effective July 19, 1979.

ADDRESS: Any suggestions or remarks should be sent to: Director (140), Bureau of Land Management, 18th & C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Don R. Mitchell (202) 343–4537 or Robert C. Bruce (202) 343–8735.

SUPPLEMENTARY INFORMATION: Notice of Intent to Propose Rulemaking was published in the **Federal Register** on December 15, 1978 (43 Fed. Reg. 58776–58777). Proposed rulemaking on coal management was published in the **Federal Register** on March 19, 1979, and a 60-day comment period was provided (44 Fed. Reg. 16800–16845). On April 19, 1979, an amendment to those sections concerning consultation with the Attorney General was published in the **Federal Register** with a 30-day comment period (44 Fed. Reg. 23508–23509).

The comments received on the coal management rulemaking are of four kinds, all of which were given careful consideration. The first category of comments is the comments submitted on the draft environmental impact statement (EIS) on the coal management program, but received too late to be considered in the final EIS on the coal management program. The second category is the thirteen comments directly related to the coal management rulemaking were received too late for consideration in the preparation of the proposed rulemaking; but were considered as comments on the proposed regulations. The thirteen comments break down as follows: four from State and local governmental sources, four from Federal agencies, one from a law firm, one from an environmental group, one from an industry association, one from an industry source and one from an individual. The third category of comments consists of the eighteen comments received during the four public hearings that the Bureau of Land Management held on the coal management program. The hearing comments break down as follows: ten from environmental groups, four from industry sources and four from individuals. The fourth and major category of comments is the 65 comments received within the time period provided for comments on the proposed rulemaking. These comments came from the following sources: thirty-two from industry, ten from environmental groups, ten from Federal agencies, seven from industry associations, four from individuals and two from law firms. Fifteen additional comments were not considered because they were not timely.

The comments recognized the need for a coal management program that would permit the leasing and mining of Federally-owned coal, with some favoring very limited leasing with strict controls and others seeking greater leasing activity with less strict controls. There was a consensus that the procedures used in considering and selecting the Federal coal management program were fair and effective. The comments were contradictory in that they demanded more specificity and the prescription of precise procedures, while complaining that the proposed rulemaking was too complicated and needed to be simplified.

Discussion of Specific Comments

Sections 3400.0–3 and 3400.0–4

Several comments on the authorities (§ 3400.0–3) recommended additional laws that should be included. After review, two more statutes, the Federal Coal Leasing Amendments Act of 1976 and the Act of October 30, 1978, were added to the section. Although the two Acts are largely amendments to the Mineral Leasing Act, there are some sections of the statutes which are not amendments to that Act but are now being implemented as part of this rulemaking. These two statutes were added because of comments suggesting that their omission meant they were not being implemented through the rulemaking.

Several comments were directed to § 3400.0–4, the responsibilities section, requesting changes. § 3400.0–4(a)(1) has been revised, consistent with the terminology now being used in the Department of the Interior, to refer to Bureau of Land Management's "assessment" of the unsuitability of lands for all or certain methods of coal mining operations and acceptability for further consideration for leasing. The express distinction in the proposed paragraph (a)(1) between the unsuitability "assessment" by the surface management agency and "designation" of Federal lands as unsuitable by the Office of Surface Mining Reclamation and Enforcement (Office of Surface Mining) in response to a petition is no longer required. This subsection now reflects the Secretary of the Interior's decision to authorize the Forest Service to carry out the Federal lands review under section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (hereafter the Surface Mining Act) (30 U.S.C. 1272(b)) on lands administered by the Forest Service using the unsuitability assessment procedures and standards in these regulations.

Other portions of subsection (a) have been revised to clarify their scope. A new paragraph has been added to reflect the role of the Bureau of Land Management as the surface management agency in the mine plan review and permitting process of the Office of Surface Mining.

Portions of subsection (b) have been revised to clarify the role of the Geological Survey in two classes of exploration activities, those on an exploration license on unleased Federal lands and those on leased lands outside the area of a permit issued by the Office of Surface Mining. New paragraphs have been added, subsections (b)(6) and (c)(7), to show the responsibility of the Geological Survey and Office and Surface Mining to advise the regional coal teams consistent with the expertise of each agency, on factors for tract ranking and their importance. These paragraphs are consistent with a similar paragraph already included in subsection (d) for the Fish and Wildlife Service.

Subsection 3400.0–4(c)(5) of the proposed rulemaking concerning the protection of the rights of holders of Federal non-coal permits and leases, has

been deleted as suggested in one of the comments. This Bureau of Land Management responsibility is now reflected in the new § 3400.0–4(a)(10) of the final rulemaking. Paragraph (c)(3) was rewritten to conform to Office of Surface Mining terminology, and paragraphs (c)(4) and (5) were added to include other Office of Surface Mining functions which are referred to in the body of the rulemaking.

Subsection (d)(1) has been amended to delete "and other fish and wildlife." As proposed, the paragraph implied that consideration of these values was exclusively a Fish and Wildlife Service function, and it thus appeared to derogate Federal surface management agencies' authority both to manage and protect wildlife habitat and to consider wildlife values in their land use and other management planning. The role of the Fish and Wildlife Service in protecting wildlife that has been accorded special legal status, which is the focus of the agency's function in the body of the regulations, is fully retained.

Since § 3400.0–4 concern only the roles of agencies of the Department of the Interior, it does not alter the functions of non-Interior agencies in Federal coal management, nor does it diminish the responsibilities that state regulatory authorities may assume upon approval of a cooperative agreement between the Department of the Interior and a state. This section was formulated to be consistent with the intra-Departmental division of responsibilities between the Bureau of Land Management, the Geological Survey and Office of Surface Mining approved by the Under Secretary on July 5, 1978 (43 FR 57662, Appendix B, December 8, 1978). A detailed Memorandum of Understanding (MOU) between the three agencies is now being completed which will refine the division of functions and implement other agreements and Secretarial decisions made in formulating and adopting the Federal coal management program. If the adoption of the three-agency MOU on Federal coal management requires the revision of any of the currently understood divisions of responsibility reflected in section 3400.0–4, this section will be revised accordingly.

Definitions (Section 3400.0–5)

The definitions section of the proposed rulemaking drew a large number of comments and many of the terms in the section have been revised as suggested. In addition, as stated in the preamble to the proposal, definitions of terms common to this rulemaking and the Office of Surface Mining final permanent program regulations agree whenever possible. The proposed regulations were not conformed to Office of Surface Mining's definitions because the final text of the Office of Surface Mining rules was not available at the time the proposed coal management regulations were signed.

In subsection (a), the term "alluvial valley floor" has been changed to conform to the provisions of 30 CFR 701.5. Proposed subsection (b), "area of mining operations," has been deleted from the final rulemaking because it is not needed. Instead, the term "permit area" is used unless some other area is intended, in which case it is described in the section where it is used. In subsection (c), the term "bonus" has been clarified by the addition of a clause to reflect the use of the term as a part of the lease sale process. The term "bypass coal," subsection (d), was changed to clarify what the proposal intended. The word "practicably" has been changed to the explanatory phrase "economically and in an environmentally sound manner."

A new subsection (e) was added defining "casual use," as used chiefly in subpart 3410 governing exploration licenses. The definition is designed to incorporate the existing standards contained in 30 CFR Part 211.

A revision has been made in subsection (f) to the term "certificate of bidding rights" that makes it clear bidding rights can also be used in payment of the value needed for a coal lease modification. This mechanism was criticized in several of the comments as a loophole that would allow lessees to get "something" in exchange for worthless leases. First, if a lease is "worthless," its fair market value will be zero, and no certificate will be issued for it. Second, consistent with the March 20, 1979 memorandum from the Director of the Office of Coal Leasing, Planning and Coordination to the Under Secretary (Appendix I to the Final EIS), the Department of the Interior does not intend, except in the case of alluvial valley floor exchanges, to exercise the limited exchange authority it does have in cases where the powers conferred by the Surface Mining Act authorize the prohibition of environmentally unsound mining. The leases most likely to be considered for exchange are leases on which environmental damage cannot be successfully mitigated or avoided because the Surface Mining Act exempts the operations, or the damage is to a resource that was not susceptible of protection through the Federal lands review process and the unsuitability criteria in section 3461.1 of these rules. These are instances where a lease may well have value and the Department of the Interior has no authority to prevent operations on the lease. The exchange provisions themselves (subpart 3435) assure public participation that can be directed to any possible or perceived abuse of this process that several of the commenters were convinced would occur. The authority to issue a certificate of bidding rights may never be exercised, but it has not been deleted from the Department of the Interior's coal management tools merely because some fear that it will lead to abuse.

Subsection (h), defining "coal resource economic value," has been edited. There is a possibility of its being substantially revised after the conclusion of the fair market value task force's work on matters concerning its use, and after completion of the MOU which may describe its use.

The term "commercial quantities" in subsection (i) was revised to delete the words "per year" in each paragraph after two commenters correctly pointed out that that qualification was not a part of the 1976 Departmental definitions of this diligence term.

The proposed definition—"compliance bond"—has been renamed "lease bond" in subsection (z) so that the term conforms to Bureau of Land Management and Office of Surface Mining usage. The change was made in response to a suggestion. It must be emphasized, however, that this bond is not the reclamation performance bond required by OSM, but is the bond for the lessee's compliance with the financial and other non-reclamation-related terms of a Federal lease.

The term "environmental assessment" has been added to the final rulemaking as subsection (o) to follow the Council on Environmental Quality's (CEQ) regulations on Federal agency compliance with the National Environmental Policy Act of 1969. The phrases "environmental analysis," meaning the process, "environmental assessment," meaning the document resulting from the process, and "environmental impact statement," meaning the document prepared under section 102(2)(C) of the National Environmental Policy Act, are now used throughout the final rulemaking.

In order to conform more closely with the usage that the Office of Surface Mining gives to it, the definition of "exploration" has been revised. The definition is not identical to the Office of Surface Mining definition, since exploration authorization by the Bureau of Land Management on unleased land is not covered by the Surface Mining

Act (30 U.S.C. 1262(e)) and may encompass slightly different activities than on-lease exploration authorized by the Office of Surface Mining or the Geological Survey. "Exploration license" has been shortened by providing simply that it applies only to unleased lands. The remainder of the proposed definition was in fact a description of the terms of an exploration license, material more appropriately located in subpart 3410.

Even though several comments requested the revision of the definition of "fair market value," is was not revised. As pointed out earlier in his preamble, after the completion of the work of the fair market value task force, the term may be addressed in supplemental rulemaking. In subsection (u), the term "governmental entity" has been revised to make it clear that the political subdivisions of a state are included in the definition. In subsection (x), the definition of a KRCRA was revised to conform to the Geological Survey's usage.

"Maximum economic recovery" has been revised to reflect the decision of the Secretary to assess coal seams on the basis of their individual profitability, rather than their collective profitability.

The definitions of "mining plan," "permit," and "permit area" have also been revised to conform to the definitions in the regulations of the Office of Surface Mining.

The term "public bodies" has been revised, as was the term "governmental entity," to include political subdivisions of a state, such as counties.

In subsection (pp), "qualified surface owner" has been amended in two respects. First, the words "may include" in paragraph (3) governing calculation of the three-year holding period have been changed to "shall include" to assure uniform administration of the qualifications. Second, paragraph (3) was revised to implement the Congressional intention that a surface owner could become "qualified" to veto leasing by holding the split estate lands in conformity with paragraphs (1) and (2) for three years without giving consent. The proposal, which followed the statute, appeared to provide that a surface owner was never fully "qualified" until he gave consent. This led to the self-defeating implication that consent was not required prior to leasing the tract, because the surface owner had not held the property for three years *prior to consenting*, and he could not qualify until he gave his consent. The revised definition, however, does retain the disqualification "window" provided by Congress—the surface owner who acquires property in year one and consents in year two is *not* "qualified," and the property could be leased without reference to the terms of that consent so long as the Federal lessee respected the provisions of the original statute under which the mineral reservation was made, such as the Stock-Raising Homestead Act. Although several of the comments complained about the definition of the term in the proposed rulemaking, it is, except for these changes, defined in the same way as it is in section 714 of the Surface Mining Act.

The definition of the term "substantial legal and financial commitments" has been revised to bring it into conformity with the definition of that term in the Office of Surface Mining's permanent program regulations, although to simplify the definition, the examples cited in the OSM regulation are not included in this final rulemaking.

Sections 3400.2 through 3400.4

Two changes have been made in § 3400.2. The first change is an amendment to § 3400.2(a)(8) to conform to the Federal Coal Leasing Amendments Act—a National Recreation Area must be designated by an Act of Congress before the outright prohibition against leasing applies. A second change in this section was the deletion of subsection (d). While lands purchased with Land and Water Conservation Fund money are included in the Federal lands systems unsuitability provisions, and might in certain cases be assessed as unsuitable for all or certain types of mining operations, there is no total statutory prohibition against their being leased.

Section 3400.3–1 has been revised by deleting the last part of (a) and all of (b). The deletion of subsection (a) has been made because its authority is questionable and will not be exercised until it is found to be well-based and in the public interest. Subsection (b), which concerned exploration licenses, was transferred to subpart 3410. It is more appropriately included in that subpart rather than here because § 3400.3–1 addresses leasing rather than the issuance of exploration licenses.

Section 3400.3–3 has been substantially revised to reflect the inclusion of the proposed section into unsuitability criterion number 1 in § 3461.1. This change conforms to the Secretary's decision to allow the Forest Service to conduct the Federal lands review on lands under its jurisdiction using the procedures and criteria in these regulations, and it conforms to the function of the sections of this subpart to reflect statutory bars against *leasing*, not the statutory considerations of unsuitability for all or certain types of coal mining operations.

Section 3400.4, which authorizes and describes the Federal/state regional coal teams that have the central role in coal activity planning in the normal leasing process, and an important role in many other coal management functions, has not been substantially revised. Subsection (a) has been revised to make it clear that regional coal teams do not have to be organized in coal production regions lacking substantial Federally-owned coal deposits. Subsection (d) has been revised to make it clear that the teams are the forums for Interior's coordination with states on matters involving Federal coal management.

Subpart 3410—Exploration Licenses

Several comments charged that the provisions of subpart 3410 were inconsistent with and duplicative of the permits governing exploration on leased lands authorized by the Surface Mining Act and the Office of Surface Mining's regulations. The final rulemaking covers the issuance of licenses to enter *unleased* public lands for the purpose of commercial exploration for coal deposits. This is entirely different from exploration activities conducted on Federal lands already leased for coal development under the terms of a mining permit issued by the Office of Surface Mining. The authority for exploration licenses on *unleased* Federal land is derived from section 4 of the Federal Coal Leasing Amendments Act of 1976 and is expressly exempted from the coverage of the Surface Mining Act (30 U.S.C. 1262(e)). The differences between the three types of exploration are clear: (a) on unleased lands under an exploration license issued pursuant to these regulations; (b) on leased lands outside an Office of Surface Mining permit area under the supervision of the Geological Survey (30 CFR Part 211); and (c) on leased lands within a permit area as part of the Office of Surface Mining permitted operations. The differences are reflected in § 3400.0–4, discussed above, and will be further set out in the MOU now in preparation.

A few comments expressed doubt that anyone would initiate or participate in exploration activities under this subpart since an exploration licensee could not be assured of receiving a lease on the lands explored, and might even be precluded from bidding because of special leasing opportunity sales. Even if this were in some cases true, the

rulemaking follows the provisions of the Federal Coal Leasing Amendments Act. It provides that the issuance of an exploration license confers no right to lease, nor does it preclude the issuance of a lease for the explored lands to others. The Congress in effect declined to follow these comments when it enacted section 4 of the Federal Coal Leasing Amendments Act of 1976.

A couple of comments questioned the meaning of "casual use" and "substantial disturbance" as used in § 3410.1–2. To clarify the two terms, a definition of "casual use" has been included in the definition section of the final rulemaking and the term "substantial disturbance" has been redefined in § 3410.2–6. In addition, the final rule makes it clear that exploration for commercial purposes, whether only casual use or not, cannot be done without a license. Section 3410.1–2 specifies that exploration for coal on unleased Federal lands for commercial purposes without an exploration license constitutes a trespass. The section has been amended to provide that the acquisition of coal resource data for sale is exploration for commercial purposes. The express inclusion of this category of commercial exploration is not to exclude any other type of commercial exploration.

One comment requested that this subpart allow the issuance of exploration licenses on those Federal lands where a lease had been issued for a specific body of coal and not the entire coal interest in the lands. This could not be done because the Federal Coal Leasing Amendments Act provides that no exploration license can be issued on Federal lands on which a coal lease has been issued.

Two comments objected to the requirement in § 3410.2–1 for a land description in the application for a license and the limitation on the area covered by the license contained in that same section. Although there is no statutory requirement for a precise land description of, or a statutory acreage limitation for, a license, these conditions have been imposed for administrative and recordkeeping purposes. However, the rulemaking does not prohibit describing the lands in full sections, which does not appear to be an unreasonable request. Further, the 25,000-acre limitation imposed by the rulemaking is not absolute since the acreage, with appropriate justification, may be increased.

Several comments objected to the provision in § 3410.2–1(d) requiring any applicant for an exploration license to provide an opportunity for others to participate in such exploration. Objections were also raised to the provision allowing the authorized officer to require modification of an exploration plan to accommodate any additional participants. In order to avoid duplication of exploration activities in an area, the provision requiring an applicant to publish an invitation to others to join in the exploration has been retained. However, the rulemaking has been rewritten to limit the authorized officer's authority to modify an original exploration plan only to those instances when modification is needed to accommodate the legitimate exploration needs of persons seeking to participate, and to avoid repetitive exploration on the same lands. The Department's policy expressed here is only rarely to modify the original plans and expressly to discourage any attempt by parties not truly interested in exploration to harass or impede exploration efforts by requesting to participate and filing for unwarranted changes in exploration plans.

The respondent to a notice does not have to submit a complete exploration plan when he indicates his desire to participate; the authorized officer will request any additional information about the respondent's exploration plans necessary to determine whether to allow participation.

One comment recommended that the Bureau of Land Management, rather than the applicant, bear the cost of publishing the notice of invitation to participate. This suggestion was based on the fact that the applicant obtains no preference right in return for the exploration data obtained at little or no cost to the Federal Government. This suggestion was not adopted because the exploration license yields no revenue to the Federal Government and the costs involved in an exploration license should be borne by the applicant rather than the taxpayers.

One comment requested the deletion of the provision in section 3410.2–1 providing for rejection of applications to conduct exploration activities which could have been conducted as part of the exploration under an existing or recent coal exploration license. Such rejection is not made mandatory by the rulemaking, rather, each determination will be made on a case-by-case basis. The provision is retained in order to allow the authorized officer to reject applications for unnecessary exploration activities. The policy of the Bureau of Land Management, notwithstanding this provision, is to encourage private exploration for Federal coal.

A sizable number of comments were received concerning the requirement for environmental analysis prior to the issuance of an exploration license. Many of the comments were of the opinion that the environmental analysis requirements contained in section 3410.2–2 were more complicated and cumbersome than they needed to be. The commenters recommended that the Department request for exploration licenses a categorical exclusion from the provisions of the National Environmental Policy Act, as discussed in the preamble to the proposed rulemaking. There were also several comments on this section that expressed the opinion that the environmental analysis provisions in the proposal were inadequate, and suggested that the rulemaking be amended to require an environmental impact statement for exploration licenses. The Department of the Interior has not yet requested a categorical exclusion, although it may do so since substantial disturbance to the natural land surface may not be authorized by an exploration license. Until the Department requests and receives such an exclusion, the National Environmental Policy Act must be adhered to for any potentially significant environmental impacts which might occur due to the issuance of exploration licenses. The section has thus been revised to require the preparation of an environmental assessment prior to the issuance of an exploration license.

A suggestion that the environmental assessment preparation and the Geological Survey's approval of the plan occur simultaneously to avoid unnecessary delay was adopted. Section 3410.2–2 was so revised.

Two comments suggested that the wording of § 3410.2–3 be amended to require that only those lands "listed or eligible for inclusion in the National Register of Historic Places" be covered rather than the language that was part of the proposed rulemaking. The suggested language clarified the intent of the rulemaking and was adopted. Section 3410.2–4 was revised to more closely reflect the language of the revised section 7 of the Endangered Species Act (16 U.S.C. 1536), and the consultation procedures necessary to implement it.

The definition of "substantial disturbance" in § 3410.2–6 of the proposed rulemaking received a number of comments. Some of the commenters were of the opinion that the definition was too restrictive and precluded any type of exploration activities, while others viewed it as much too lenient,

precluding nothing but bad exploration practices. Because of the apparent ambiguity, the definition has been rewritten to clarify its meaning.

One comment objected to the two-year limitation imposed on exploration licenses by the rulemaking. The two-year limitation is a provision of the Federal Coal Leasing Amendments Act and no longer period can be provided by the rulemaking. Several other comments on this same section objected to the requirement in the section for completion of clean-up and reclamation during the two-year life of a license. It is highly unlikely that clean-up and reclamation could be accomplished within the two-year life of a license while allowing sufficient time to conduct an adequate exploration program, so the requirement that clean-up and reclamation be completed within the two-year life of the license has been deleted. This deletion does not reduce the requirement that clean-up and reclamation promptly take place.

A few commenters wanted a provision added to section 3410.3–1 allowing for the granting of an extension of the life of an exploration license. There is no provision for such an extension in the Federal Coal Leasing Amendments Act and none is provided in the final rulemaking.

The question of the definition and use of the term "substantial disturbance" was again raised by several commenters on § 3410.3–4(b). As pointed out above, the term "substantial disturbance" has been redefined and this section has been revised to show that substantial disturbance of the natural land surface or of improvements will not be authorized by an approved exploration plan. Temporary removal and replacement of corner markers or fences is not damage to improvements.

With regard to § 3410.3–4(c), several comments requested clarification of how "an agreement or lack of agreement" was used in the section. The comments also questioned why consent of the surface owner should have any bearing on the amount of a bond. In determining the amount of the bond required for protection of the surface owner, the authorized officer should consider any agreement which the license applicant and the surface owner have made with reference to compensation. If no such agreement exists, that too would be considered, but it is agreed that the consent of the surface owner should have no bearing on the bond amount and the section has been amended accordingly.

Some comments on § 3410.3–5 found it unreasonable that licensees may be required to collect and report ground and surface water data, while other comments requested that it be made mandatory that ground and surface water data be reported by a licensee. After studying the section and the comments, it has been determined that the authorized officer should only require an applicant to report that information that would be collected, in the authorized officer's judgment, as part of the on-going exploration program. The Department has amended the section to so state.

A major concern of those commenting on subpart 3410 was the confidentiality of the data obtained during exploration activities conducted under a license issued under this subpart. The Federal Coal Leasing Amendments Act provides that all data obtained during exploration will be held confidential until after the area has been leased or until such time as the Secretary of the Interior determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first. The rulemaking has been amended to require that the data be submitted only to the Mining Supervisor and not others as required by the proposed rulemaking, and the word "proprietary" has been deleted from the section to bring it into conformity with the statute. No other changes in this section were made. The Department recognizes that the principal benefit of exploration to the explorer is his right to keep this data confidential and use it in, or sell it for use in, a competitive lease sale. The regulations will be administered consistent with this principle. With this, as well as other matters related to proprietary data, however, the Department will not maintain, as confidential, data which are otherwise in the public domain. In addition, information similar to that acquired by a licensee and submitted to the Department under a license will normally be included in the public environmental analysis of a lease proposal. The Department will study whether it is appropriate to establish by rule the duration of the confidential treatment to be given exploration data. This may be the subject of future rulemaking.

Subpart 3420 contains the general competitive coal leasing provisions of the Federal coal management program and was the subject of many comments. This subpart is designed to implement most of the leasing components of the coal management program selected by the Secretary.

Several comments on § 3420.1 suggested that the final rulemaking provide additional opportunities for special leasing for those who qualify as public bodies or small businesses. Several comments on § 3420.1–4 suggested clarification on the issues of joint ventures and assignments. Changes were made to allow for, but prevent abuse of, joint venture or other participation arrangements between public and private utilities. Allowance was also made for limited assignments of leases obtained through public body lease sales for the purpose of obtaining loans to develop the leases. The section has been clarified to allow special leasing entities to participate in the general competitive lease sales not designated as special leasing opportunity sales as well as in those special sales.

Several commenters feared that the requirement that leases only be issued on lands in a Known Recoverable Coal Resource Area (KRCRA) would act as a screen, and that the Federal land available for consideration for leasing would be limited by the progress of this Geological Survey classification program. KRCRA designation is not a screen like those described in § 3420.2–3, and activity planning may proceed prior to designation of a KRCRA covering those lands. Section 3420.1–3 merely provides that, for now, KRCRA designation is the method by which the Secretary under section 2(a)(1) of the Mineral Leasing Act (30 U.S.C. 201(a)(1)) "classifies" lands for leasing. Such designation would occur, however, prior to holding a sale under subpart 3420.

Section 3420.1–4(b)(2) refers to small coal companies as defined in 13 CFR Part 121. The Small Business Administration published an advance notice of proposed rulemaking for this purpose on December 8, 1978 (43 FR 57611), and published its proposed rulemaking on March 14, 1979 (44 FR 15513). The final definitions should be published in the near future.

The general comments on subpart 3420 were primarily concerned with the initiation of a coal management program using revised existing management framework plans rather than resource management plans formulated and completed in compliance with the procedures and standards in the Bureau of Land Management's land use planning regulations. These commenters feared that if the use of management framework plans were allowed to continue over a long period of time, it would defeat the purpose of the coal management program, and the Federal Land Policy and Management Act and the Federal Coal Leasing Amendments Act of 1976, by allowing coal leasing to

proceed without top-quality information on the impacts of the coal leasing program on the lands and other land uses. There was also the concern, because other uses such as grazing and wilderness have judicial or statutory deadlines for completion of planning for those resources, that the schedule for new land use planning would emphasize units where these uses prevail and de-emphasize units where coal leasing is most likely, despite the fact that coal mining may be the most significant use from a land use planning and environmental impact standpoint. Partly in response to the concerns expressed in these comments, the Department has set a deadline of 1985 in this rulemaking after which time no coal activity planning will be initiated in areas not covered by resource management plans as prescribed in the Bureau of Land Management's land use planning regulations under the Federal Land Policy and Management Act.

The final rulemaking continues to allow coal leasing based on land use plans completed prior to the enactment of the Federal Land Policy and Management Act and on plans completed after the enactment of that Act but not prepared in accordance with regulations to implement the Act. The final rulemaking does, however, differ in several ways from the proposed rulemaking. First, definite limits are set after which non-conforming plans will no longer be used. Second, standards are set to judge the adequacy of these existing plans as the basis for coal management decisions.

These changes in the final rulemaking reflect the Department's position that while neither the Federal Coal Leasing Amendments Act nor the Federal Land Policy and Management Act in any way legally bar coal leasing based on existing plans, the Department of the Interior takes its land use planning responsibility seriously and will not lease where plans are inadequate. It should be clearly understood that the addition of the planning standards in § 3420.1–5(c) is not intended to disqualify any plan, which includes or is supplemented with the application of the unsuitability criteria and surface owner consultation, for technical noncompliance or other minor problems as long as the plan provides a reasonable basis on which to proceed to tract delineation, evaluation, ranking and scheduling for sale. Many of the standards included in the final rulemaking are derived from the standards in the Bureau of Land Management's planning manual and from the Federal Land Policy and Management Act, and they are intended to incorporate the practices and procedures that were previously required and which are in accordance with the newer Federal Land Policy and Management Act requirements. The Department believes this approach is reasonable, particularly in view of the extensive amount of area-wide environmental analysis that will be done as part of the application of the unsuitability criteria in the plans, or in supplements to the plans, and in the subsequent activity planning, and in view of the extensive opportunity for public involvement in both processes.

As noted in some of the comments, the regulations promulgated for EMARS in January 1977 appear to have adopted more rigorous standards for land use planning than those set out in the proposed rulemaking as part of this program, in that the 1977 regulations incorporated all of the requirements of section 202(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712(c)) as the measure of whether a plan was "comprehensive." (43 CFR 3525.4 (1978)).

In retrospect, it is apparent that the Department did not fully understand the significance of including these criteria in the EMARS regulations. It is clear that no plan existing in 1976 could meet all of these standards. For example, they did not give priority to areas of critical environmental concern since that term only first appeared in FLPMA. Yet, it is also clear that the Department intended to use those plans "as is" for coal leasing. The preamble to the October 28, 1976 proposed revision to the EMARS regulations, prepared in response to the passage of the Federal Coal Leasing Amendments Act, contained the statement, "The Department has concluded that land use plans completed under the Bureau of Land Management's land use planning system comply with the requirements of section 3 of the Federal Coal Leasing Amendments Act." (41 FR 47259.) The October 1976 proposal also explicity said that the Bureau of Land Management will "prepare plans for lands under its jurisdiction in accordance with its procedures for the preparation of management framework plans." (43 CFR 3525.1–2(a)(1)(ii), 43 FR 47262.) This proposal clearly demonstrates that the Department felt that management framework plans were "comprehensive," and that the Department intended to lease coal under those plans.

The October proposal did not consider how the Federal Land Policy and Management Act of 1976 affected this process since that Act was passed only seven days before the proposed EMARS revision was published in the **Federal Register**. As previously noted, the Department responded to comments on the October proposal that raised the question of how the Federal Land Policy and Management Act affected coal leasing by adding as standards in 43 CFR 3525.4 the provisions of section 202(c) of that Act. It was also made clear in the preamble that the Department would continue to use management framework plans. The Department reiterated its conclusion that it would continue to use its present land use plans despite the addition to the regulations of the new statutory requirements. The Department construed the effect of the Federal Land Policy and Management Act in just this fashion. The coal leasing program proceeded without any revision to the existing management framework plans. The language included in the text of the regulations adopted for EMARS that indicates that the Department intended anything different was simply in error.

The decision to continue to use existing plans (as modified by the program the Department of the Interior is now adopting) is legally well-founded. The Federal Coal Leasing Amendments Act recognizes the validity of existing plans, both in the legislative history (122 Cong. Rec. E3667, June 29, 1976), and in section 3 of the Act itself—the Secretary is to prepare plans "where such plans have not been previously prepared."

Similarly, the Federal Land Policy and Management Act has several provisions which make it clear that the Department of the Interior may continue to manage, lease and dispose of lands prior to the completion of plans that comply fully with section 202 of that Act. The requirement for preparing and maintaining an inventory of all public lands in section 201(a) is explicit that any inventory-related activity "shall not, of itself, change or prevent change of the management or use of the public lands" (43 U.S.C. 1711(a)). Section 202, which requires new plans to be prepared, explicitly recognizes pre-existing plans and makes them subject to review, but does not mandate that they be replaced or revised. The legislative history of the Federal Land Policy and Management Act confirms that the Congress knew of pre-existing plans and was satisfied with them. "The Committee is well-acquainted with the land-use planning of the Bureau of Land Management and the Forest Service, and has found them to be consistent in general principles and practices with the

objectives of H.R. 13777." H.R. Rep. No. 94–1163, 94th Cong., 2d Sess. 5 (1976).

The section of the Federal Land Policy and Management Act that directs that lands be managed in accordance with plans developed under section 202 explicitly limits this direction to situations where such plans "are available" (43 U.S.C. 1732(a)). The section of the Act which authorizes the Department to issue rules to carry out the provisions of the Act also makes it clear that until any new rules are issued, lands may be administered under existing rules (43 U.S.C. 1740).

This conclusion is also the common sense conclusion. The Congress could hardly be expected to shut down all management activities on public lands for the three to ten years it will take to do new land use plans without mentioning its intention in either the Federal Land Policy and Management Act itself or its legislative history. This final rulemaking, together with the final rulemaking on planning under the Federal Land Policy and Management Act, provides a sound and reasonable transition from planning completed or initiated prior to its enactment and planning fully conducted under its requirements. Unlike the intended result of the EMARS regulations, in this coal management program existing land use plans will not be used as the basis for leasing without review and change. This final rulemaking requires a review of each land use plan in accordance with the standards in § 3420.1–5, and requires, at a minimum, a change in the plans in the form of a supplement which incorporates the application of unsuitability criteria and consultation with surface owners, and provides a cut-off date after which activity planning will not be initiated on land use plans that are in less than full compliance with the Bureau of Land Management's land use planning regulations under the Federal Land Policy and Management Act.

In addition to the comments on land use plans directed to the issues discussed above, there were several comments on section 3420.1–5's requirement for the preparation of a land use plan or, under certain circumstances, a land use analysis before Federal lands can be considered for a lease sale. The main concern of the comments addressed whether the land use planning and land use analysis process would make adequate provision for public participation. The section has been amended to give the Secretary of the Interior, the surface management agency or the state planning entity specific direction on supplementing the land use plan or land use analysis in conformity with the new requirements in § 3420.1–5(c). The final rulemaking makes specific provisions for public participation in the supplement preparation process, as requested by numerous commenters.

Sections 3420.2–1 through 3420.2–7 describe the land use planning process necessary for lands administered by the Bureau of Land Management before they will be found to be acceptable for further consideration for coal leasing, that is, before they will be considered in activity planning under § 3420.4. Specific steps have been outlined in § 3420.2–3 describing the screens and other planning considerations that will be applied to all coal-bearing lands during the land use planning process. A few commenters complained that there is no opportunity for anyone to introduce information into the process for determining development potential for coal deposits. To clarify this point, § 3420.2–3(b) has been revised to encourage coal companies and others to submit information to the U.S. Geological Survey for use in the CRO/CDP mapping program. This is in addition to the provision that allows coal companies and others to submit information to the Bureau of Land Management during the early stages of land use planning. It is expected that other surface management agencies will provide similar opportunities for the submission of coal resource data for use in agency land use planning.

As a result of a Secretarial decision on the coal management program, § 3420.2–3(e) has been amended by deletion of the provision for firm intent by a qualified surface owner not to provide consent for surface mining operations. Refusals to consent, treated in subpart 3427, may be filed during activity planning only.

The impact threshold concept described in section 3420.2–3(f) was the object of a large number of comments questioning the intent of that concept and requesting further definition of threshold levels. This process is not to be construed as a screen such as those listed in § 3420.2–3(a); it is a planning consideration the application of which will vary from area to area. The threshold concept will be clearly defined in the final Bureau of Land Management land use planning regulations. In those instances where threshold levels concerning leasing established during comprehensive land use planning would be reached in the activity planning process, the Bureau of Land Management will halt, suspend or condition further consideration of any leasing in the area as necessary to comply with the comprehensive land use plan.

Comments suggested that hearings on land use plans provided for in § 3420.2–4 must be scheduled regardless of whether any request for such a hearing has been received. The section, however, complies with the provisions of the Federal Coal Leasing Amendments Act, which requires that the Federal Agency or state entity responsible for preparing the comprehensive land use plan for the area being considered for coal leasing must provide an opportunity for public hearing on the proposed plan prior to its adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plan. This requirement for public participation is further reiterated in the Bureau of Land Management's land use planning regulations.

Section 3420.2–6 has been revised, as suggested in a comment, specifically to include consultation with Indian tribes. This change requires the Bureau of Land Management to consult with any tribal government that administers lands within or near the boundaries of a comprehensive land use plan area to obtain its recommendations concerning determinations that lands are acceptable for further consideration for leasing.

Sections 3420.3–1 through 3420.3–4, which establish procedures for periodically adopting regional production goals and setting regional leasing targets, were the focus of a relatively large number of comments. While no major revisions in the content of these sections have been made in the final rulemaking, certain changes suggested in the comments were made to clarify their operation. Secton 3420.3–1(a) has been modified to conform with the revised provisions of subpart 3425 providing for leasing on application. Subpart 3425 now divides competitive leasing applications into two classes according to the geographic location of the lands applied for: lands inside a western coal production region or inside the part of an eastern coal production region in which activity planning under § 3420.4 will occur; and lands outside coal production regions or inside an eastern coal production region but outside any area of activity planning in that region. Applications for lands in the former class will be accepted only under the emergency leasing criteria of § 3425.1–4. Applications in the latter class will be accepted and may be processed without any "emergency" showing. Section 3420.3–1(a) has been amended to provide the mechanism for

designating those portions of eastern coal production regions which fall in or outside of activity planning areas. Section 3420.3–1(a) continues to provide for establishing the regions for which coal teams will be formed, production goals may be adopted, leasing targets may be established and activity planning occur.

Section 3420.3–1(b) was amended to incude Indian tribes as parties with whom the Secretary of the Interior should consult in adopting regional coal production goals.

The procedure for adopting regional production goals in paragraph 3420.3–2(d) has been amended to delete the Federal Register notice on the Department of Energy's final regional production goals. This regulation appeared to attempt to require the Department of Energy (DOE) to provide the public an opportunity to comment in setting their regional coal production goals. Public participation in this Department's adoption of the DOE regional production goals is expanded. Paragraph (d) invites comments on the goals in writing as well as in testimony given at public hearings. Further changes add Indian tribes to the list of parties whose views on regional production goals are especially sought, and require publication of the meetings of the regional coal teams on their recommendations concerning the adoption of regional production goals.

Section 3420.3–2(f) has been amended to provide that the Secretary of the Interior sets preliminary regional leasing targets based on DOE's regional production *goals*, as adopted by the Secretary, not on "Department of Energy targets," as it erroneously appeared in the proposed rulemaking. This error was, understandably, the cause of confusion on the part of many of those commenting on the proposed rulemaking. A further change in this section specifically adds the expected production from Indian tribal lands to the list of production sources the Secretary of the Interior is to consider in setting regional leasing targets. Another change in the section makes it clear that the Secretary of the Interior is to consider the relative economic and any other benefits of developing Federal, rather than non-Federal, coal where the proposed rulemaking required consideration of only the relative environmental benefits. Finally, the section now requires publication of the preliminary leasing targets in regional newspapers as well as the Federal Register.

Several of the comments on section 3420.3–2 misconstrued the section as requiring two or three notices of adopted production goals and preliminary leasing targets instead of just one publication of adopted goals and preliminary targets. To clarify this point, paragraphs (e) and (f) were restructured to clarify the chronology. Paragraph (h) has also been amended to delete the requirement for "sufficient" requests before any additional public hearings are held, allowing additional public hearings if there are any requests for them.

In response to a comment, § 3420.3–2(k) has been expanded to require the preparation of a supplement to the regional lease sale environmental impact statement if major changes in the tracts proposed for lease sale occur at the second-year review of leasing targets and the sale schedules. This provision was part of the final programmatic description of the coal management program, but was not included in the proposed rulemaking.

Significant opposition was raised in the comments on § 3420.3–2(l) to the exception to the procedure for setting targets that applies to the first round of lease sales provided in that section. As a result, the section has been changed to limit the exception only to sales held in 1981 and 1982. Additionally, in his June 1, 1979 decisions on the Federal coal management program, the Secretary of the Interior has decided to seek public comment on the leasing targets which he selected for the 1981 and 1982 lease sale schedules.

Sections 3420.3–3 and 3420.3–4 received very few comments. One comment which was adopted requested that a community's interest against, as well as for, coal leasing be a factor in any decision the regional coal team may make to develop alternative lease sale schedules that do not correspond with the Secretary of the Interior's final leasing target.

Sections 3420.4–1 through 3420.4–7, which constitute the activity planning provisions, received a number of comments. Section 3420.4–1 was revised, in compliance with a suggestion in a comment, to clarify the point that split estate lands otherwise acceptable for consideration for leasing would be deleted from further activity planning upon verification of a refusal to consent by a qualified surface owner. This deletion would remain effective until either the surface owner withdraws the intent at the time of revision of the comprehensive land use plan encompassing the area or until the surface estate changes ownership.

The comments on § 3420.4–2 expressed a great deal of concern that expressions of interest would only be accepted during activity planning. The emphasis of the concern was that if such information is provided only at this point, it will be too late to have any impact on the leasing process. The regulations in section 3420.2 governing land use planning are clear in their declaration that industry can provide data to the Geological Survey for its use in the CRO/CDP mapping program and can submit data during the early phases of land use planning for consideration during the high and moderate coal development potential screen (subsection 3420.2–3). In addition, industry can participate in the land use planning process like any other resource user, individual or segment of the public. Section 3420.4–2(c) expresses this; the Department hopes that these opportunities are exercised by those concerned. Formal expressions of leasing interest that will be used in tract delineation, ranking and scheduling under these sections will not be called for unless activity planning is initiated in the region, and will then be accepted only on lands found acceptable for further consideration for leasing under § 3420.2. The section was also revised to make it clear that data submitted in response to the call need not be site-specific, but can relate to sizes of tracts or types of coal, including coking coal, desired by the respondent.

Tract delineation, § 3420.4–3(a), will be a continuing process conducted on a regular basis on lands found to be acceptable for further consideration for leasing under § 3420.2. As resources permit, delineation of tracts of acceptable lands will occur whether or not a leasing target is established for the region and a call for expressions of leasing interest is made. This will shorten the work and time required to respond to a large leasing target in any region at any time, and assure that tracts are available for other coal management purposes, such as exchanges.

Several commenters requested that certain considerations be expressly listed in the regulations as delineation criteria. The regulations have been left general in nature, and each regional coal team may recommend specific considerations for use in tract delineation within its region. Specific considerations such as possible reclamation of abandoned, mined lands after re-mining, and checkerboard land ownership patterns in the railroad land grant and other areas, will be legitimate factors both in tract delineation and in ranking and scheduling, even without their being listed in the regulations.

Several of the comments raised questions concerning the membership of the regional coal teams mentioned in § 3420.4–3(h). The regional coal teams will be made up of the Directors of the relevant Bureau of Land Management State Offices and of the Governors of the relevant states, or their designees, under the direction of a chairman appointed by and responsible to the Director of the Bureau of Land Management. The constitution and functions of the teams are set out in section 3400.4 of the rulemaking.

The clause "subject to limitations of data availability, budget, and manpower" contained in § 3420.4–3(h) of the proposed regulations, was dropped. The clause caused confusion among several commenters. The regional coal teams will assign priorities for initiation of tract delineation within the areas acceptable for further consideration. This may be necessary as the limitations mentioned above may make it impossible to delineate tracts within all areas acceptable for further consideration immediately upon initiation of activity planning.

A number of comments asked for clarification of the term "other coal management purposes" as it is used in section 3420.4–4. The section has been amended to specify that those purposes include exchanges pursuant to subparts 3435, 3436 and 3437 of this title. Other commenters asked that § 3420.4–4(b)(1) be amended to require the regional coal team to defer ranking of any tract because of insufficient data, rather than retaining the tract in the ranking process at the team's discretion. This suggestion was adopted in the final rulemaking. Subsection 3420.4–4(b) was amended to require that the tract ranking factors and weights be published in any regional lease sale environmental impact statement (EIS) as part of the documentation of the ranking and selection process. Industry views in response to the call for expressions of leasing interest are clearly appropriate ranking subfactors. The section also expresses the team's authority to modify tract boundaries in the ranking and selection process as warranted by analysis developed in putting together the tract profile.

Consistent with prior changes, Indian tribes have been added to the list of entities in subsection 3420.4–4(b) that the regional coal team may wish to consult.

In response to a number of comments, section 3420.4–5 was amended to make it clear that a regional EIS on the proposed 4-year lease sale schedule will be prepared in accordance with the provisions of the National Environmental Policy Act, as has been the Department's intention from the beginning. A statement will be prepared for each coal region for which a sale schedule is proposed. In addition to analyzing the site-specific environmental impacts of each tract being considered for lease sale, the intra-regional cumulative environmental impacts of the proposed leasing action and alternatives will be covered.

Two new sections have been added to § 3420.5 of the final rulemaking to provide for formal consultations with Indian tribes and the Attorney General, and their timing. The section on Indian tribes requires the Secretary of the Interior to consult with any Indian tribe that might be impacted by the adoption of a proposed lease sale schedule. The Secretary must also consult with and give due consideration to the views of the Attorney General before the adoption of a proposed lease sale schedule. This § 3420.5–5 is provided to comply with the requirements of section 15 of the Federal Coal Leasing Amendments Act of 1976, which provides that the Secretary "consult with and give due consideration to the views and advice of the Attorney General * * * at each stage in the issuance * * * of coal leases." 30 U.S.C. 184(1).

A few comments expressed concern about the written surface owner consent provided for in § 3420.6, with emphasis on the fact that tracts lacking confirmed written consent should no longer be considered in the activity planning process. Section 3420.6 provides that the absence of written consent for a split estate tract has two effects: (1) the Secretary of the Interior will not include such tracts in a lease sale schedule if other comparable tracts on which written consent has been received are available; and (2) the Secretary of the Interior will establish a firm date when, in the absence of receipt of written consent, the tract will be deleted from any schedule. The first of these two provisions speaks only to the relative ranking of split estate tracts; the Secretary's policy continues to be that split estate tracts even with written consent will not be preferred over comparable tracts wholly owned by the United States. This section does not apply, of course, to tracts on which a refusal to consent under § 3427.2 was received during activity planning. Such lands are deleted from activity planning upon confirmation of the refusal to consent.

Section 3420.7, providing for the announcement of the final regional lease sale schedule by the Secretary of the Interior, has been amended as requested to include publication of the lease sale schedule in at least one newspaper of general circulation in each state within the region.

Several commenters felt that a hearing should be held prior to any revision of a regional coal lease sale schedule carried out pursuant to subsection 3420.7–2(a). No change was made since any revision considered must be an alternative previously covered in the regional coal lease sale EIS and therefore subjected to the previous hearing(s) on that EIS.

Subpart 3422—Lease Sales

The sales procedures in subpart 3422 apply to general competitive leasing under subpart 3420 and to leasing in response to an application under subpart 3425. A number of changes have been made in the subpart to assure its application to both types of sales. As an example, the introductory clause of § 3422.1–1 has been revised to guarantee that the request for public comments on fair market value and the other economic terms of tracts that are scheduled for lease sale or may be sold will occur at least 30 days prior to publication of the sale notice no matter which type of sale might follow.

A number of comments on § 3422.1–1(a) were directed at the Department of the Interior's calculation, and policies toward receipt, of fair market value in its most recent coal lease sales. The Department's fair market value task force is examining these issues in further detail at the direction of the Secretary, and will use the comments received on the proposed rulemaking in its study. Its report is due in September 1979. The Department has found itself in a difficult position because this program is being formulated under the shadow of the longstanding accusation that Federal coal has historically been undersold. At the same time, the only lease sales are short-term, "emergency" need cases in which the very qualification to hold the sale means that there will most likely be no competition between bidders for the tract being offered—only one applicant has the qualifying need. In this situation, the Department has had to assure that its own economic evaluation of the tract, rather than free market bidding competition, guarantees the receipt of fair market value to the United States for lease issuance.

The task force's examinations of the use of the Geological Survey's coal resource economic valuation (CREV) model, and the use of alternative methods of calculating fair market value, including appraisal and

comparable sales methods, is continuing. At least until this study is complete, the Department of the Interior is not prepared to disclose the "standards and procedures that guide the Government's [fair market value] appraisal," and to describe the components of the CREV model and how it works. These two proposed provisions in § 3422.1–1 (a) and (b) are thus deleted. A new rulemaking proceeding may be initiated after the new task force report is completed and made public. If so, an advance notice of proposed rulemaking will be published.

Sections 3422.1–1 (a) and (b) retain their procedures for the collection of these data and comments by the Bureau of Land Management, their transmittal to the Geological Survey and the Geological Survey's reply recommendations prior to publication of any notice of sale for a specific tract.

A new § 3422.1–1(c) has been added to describe the manner in which data submitted in response to the request for information will be treated by the Department of the Interior.

A number of comments asked what was the meaning of the third sentence in § 3422.1–2 of the proposed rulemaking. The sentence has been revised by the use of the description of fair market value for public body sales in the proposed section 3420.0–6. The same CREV model would be used, in other words, and the same discount rate, but the calculation of a reasonable profit is of course not relevant to nonprofit public bodies. The minimum bonus bid provision of the section is designed as a floor to apply to all subsequent notices of sale, whether the tract is being sold by cash bonus, royalty or any other bidding method. The acceptable bid, that is, the fair market value bid, for any sale may be higher than the minimum acceptable bid in the notice for that sale. The minimum published in the notice is the minimum bid necessary to have the bid be considered at all by the sale panel and not have it be summarily rejected. It also assures that all bidders who wish to participate in oral bidding will be serious bidders, as discussed more fully below with respect to § 3422.3–1.

Section 3422.2 has been revised in a number of respects: (a) it now tracks the statute to require "not less than three" weeks publication of the notice of sale; (b) it now clearly requires that all private surface owners receive notice of a sale, whether or not they are "qualified" under section 714 of the Surface Mining Act; (c) it no longer requires the notice of sale to call for comments on fair market value—this is now provided for in § 3422.1–1 discussed above (the Department of the Interior will no longer be subject to the untenable position of having published a minimum acceptable bid and receiving two days before a sale a comment that casts doubt on that valuation); (d) it requires that the detailed statement accompanying the notice contain bidding instructions and a copy of the proposed lease; and (e) it now provides for the publication of the pre-lease preliminary indication of maximum economic recovery, consistent with the MER procedures endorsed by the Secretary on June 1. Section 3422.2(e) has been deleted because of the change in the timing of the request for comments on fair market value discussed above.

Although § 3422.3–1 has not been substantially changed, it is noted that the section requires the submission of a sealed bid to qualify for oral bidding if the latter is the method of sale. Such a sealed bid might be at the minimum rate posted in the sale notice, but the requirement is designed to and should serve the purpose of deterring frivolous or nuisance oral bids not backed by submission of one-fifth of the minimum acceptable bid and statements of necessary qualifications.

Section 3422.3–1(b) has been amended to make it clear that the "next highest qualified" bidder may be awarded the lease, not just the "second high" bidder as set out in the proposed rulemaking. A comment on § 3422.3–1(c) requesting that bidders be allowed extra time to come up with the difference between their sealed and winning bids has been rejected. It is assumed that bidders come to an auction with blank checks and an authorization to bid to a certain level. Given this set of assumptions, the bidders should, in all cases, be ready and able to tender one-fifth of the amount of their total bid at the close of the bidding.

Section 3422.3–2(a) of the proposed rulemaking contained the Department of the Interior's proposed policy that split-estate tracts covered by a non-transferable written consent from a qualified surface owner will not be sold except at a sale using the inter-tract bidding method. The Secretary of the Interior endorsed this policy in his examination of split-estate leasing questions on June 1. While this is the Department's policy, the authority to promulgate regulations codifying that policy was transferred to the Department of Energy as part of their authority relating to the "fostering of competition for Federal leases" and "implementation of alternative bidding systems." While this policy is firm, it has been deleted from § 3422.3–2(a) and there is no codification of it in Group 3400 of Title 43 of the Code of Federal Regulations.

Section 3422.3–4 covers the role of the Department of Justice in reviewing a potential lessee's coal holdings to determine whether lease issuance might create or maintain a situation inconsistent with the antitrust laws under section 15 of the Federal Coal Leasing Amendments Act. The Department of Justice has revised the information required for a complete submission of coal holdings for its review. First, the requirements proposed on April 19, 1979 (44 FR 23508), have been amended by the addition of a definition for "Free Swelling Index." Second, three new categories of information for the coal in the lease at issue have been added: the free swelling index of the coal; estimated recoverable coal reserves; and anticipated sulfur content of the coal as it will be shipped. Third, a new category has been added for the potential lessee's other coal holdings: all bituminous coal not in one of the other categories specified in the proposal. Fourth each of the proposed categories related to the bidder's coal holdings is qualified by a new limitation to report only those high, and low and medium volatile bituminous coals with a free swelling index greater than 4.

To speed the transmission of information and the review process, the final rulemaking provides that any Department of Justice notification that a submission of data is inadequate will be communicated directly to the successful bidder, and simultaneously to the authorized officer. If, after submission of all required data, no word is received from the Attorney General within the 30-day period, no further delay is required; the authorized officer may issue the lease. In addition, the Department of Justice may notify the authorized officer in less than the 30-day period that it has no objection to lease issuance, and the lease may be issued. Finally, to ease industry fears for the confidentiality of these data, § 3422.3–4(h) has been added.

The Department of Justice proposes to apply the standard of review for finding *prima facie* inconsistency with the antitrust laws set out in its May 1978 and May 1979 Reports of the Department of Justice, *Competition in the Coal Industry*, GPO stock numbers 027–000–0678–7 and 027–000–0790–2, respectively. The Department of Justice and the Bureau of Land Managment will soon begin work on a memorandum of understanding to define the procedures

for the Department of Justice's exercise of its review roles in Federal coal lease issuance and transfer (see discussion of subpart 3453).

Section 3422.4(a), which covers the award of a lease, was modified to specify the minimum requirements of a Bureau of Land Management decision to award a lease. Section 3422.4(c) was revised, as suggested in a number of comments, to track the statutory requirement that 50 percent of the acreage, not of the tracts, per year be leased on a deferred bonus basis.

Subpart 3425—Leasing on Application

As a result of the large number of comments received on subpart 3425, the Department of the Interior has rethought its approach to procedures for competitive leasing in response to applications. Based on these comments, revised options regarding this component of the Federal coal management program were presented to the Secretary as part of the June 1 decisions. As a result of the comments and the Secretary's decisions, proposed § 3425.1–5, concerning "hardship" cases, has been, except for one subsection, deleted from the final rulemaking. The retained provision, renumbered § 3420.1–6, authorizes the issuance of a lease in response to any application listed in the modified court order in the *NRDC* v. *Hughes* case. The section was revised to make it clear that not just the listed applicants are qualified to bid for and receive a lease on such a tract; the authorization to lease in response to those applications includes the authorization to lease to any qualified high bidder. While the court order itself expired upon the Secretary's personal review and selection of the new Federal coal management program, the applications may, of course, still be processed, and the same considerations of the public interest that led to their listing in the court order still mean they should be processed outside the normal leasing process.

Section 3425.1–5 has been replaced with a new section which permits leasing outside of major production regions (discussed with respect to § 3420.3–1(a) above), in response to a lease application. There are no "emergency" or special need qualifications for applications under the new § 3425.1–5, other than the geographic location of the coal. Reserve tonnages of coal are not restricted in such leases. Before any decision to lease such lands is made, they will have to be included in a comprehensive land use plan or land use analysis consistent with the provisions of § 3420.1–5, and the application will have to be analyzed in compliance with the National Environmental Policy Act.

Competitive leasing in response to applications inside coal production regions will be more strictly controlled in the final rulemaking than in the proposed rulemaking. Applications inside coal regions will be accepted only if they meet the special needs delineated in § 3425.1–4. To reflect the change in the scope of the subpart, its title has been changed from "Emergency leasing" to "Leasing on application."

Although it does not appear as a part of this rulemaking, the Secretary of the Interior has adopted a policy to discourage a company very strongly from opening a mine which has insufficient reserves to operate successfully unless it subsequently obtains a Federal coal lease upon application under this subpart. This policy will be enforced by the Department of the Interior, in part through § 3425.1–4(c), in the exercise of the Secretary of the Interior's discretion not to lease in response to any coal lease application. As an example, § 3425.1–7 provides that any application may be rejected if leasing in response to the application would violate the normal leasing process under subpart 3420. All potential lessees of Federal coal should be aware that attempts to pressure the Department to lease by opening a mine with insufficient reserves will be unsuccessful.

The purpose section for subpart 3425 has been deleted from the final rulemaking because the subpart's purpose has changed and is now covered in the rewritten objectives section. The new objectives section also recognizes the new dual geographic nature of the subpart, with primarily emergency leasing in coal production regions and applicant-initiated leasing elsewhere. The policy section has been revised to reflect the Secretary's change of policy on the amount of coal to lease in emergency leasing cases. The amount of recoverable reserves leased will not exceed eight years of production regardless of the future course of activity planning under subpart 3420 in that area. Previously, if leasing activity under subpart 3420 was expected to reach the site of an emergency lease prior to the eight-year maximum term, the emergency lease period would have been shortened accordingly. This change may result in substantial administrative savings.

A comment requested the insertion of an authority section for subpart 3425. This request was not adopted because the authority for this subpart is set out in § 3400.0–3 and does not need to be repeated here. Another comment on this subpart asked that the bypass sale condition be set out apart from the emergency leasing conditions in the objectives section of the subpart. The Department of the Interior has treated bypass sales and other emergency sales under the same regulatory structure and there is no need to treat them separately. A few comments raised questions about the application form required by § 3425.1–2 of the proposed rulemaking. The requirement for a special or approved form has been deleted from the final rulemaking.

The largest number of comments on this subpart were directed to § 3425.1–4 of the proposed rulemaking, which was entitled "Emergency leasing critera—existing leases" in the proposal. Many comments were concerned about the language in § 3425.1–4(a)(2), which stated that the need for coal must have resulted from circumstances which were beyond the control of the applicant or which he could not have reasonably foreseen or been prepared for. The comments expressed the opinion that this was an imprecise standard and the Department should, especially in bypass cases, lease coal regardless of the circumstances to conserve the resource. The Department of the Interior is determined, however, that the emergency leasing provision will not be used to evade or frustrate the normal leasing process under subpart 3420. Bypass coal can and will be leased under the provisions of subpart 3420. The proximity of unleased Federal coal to an existing mine and the potential for bypassing the resource will be factors considered in tract ranking, selection and scheduling. But the existence of bypass situations will not be allowed to drive the competitive coal leasing component of the coal management program. Because of the mixed ownership patterns that exist in many areas, it may be easy for an operator to create a bypass intentionally. The Department believes, and this section clearly sets out, that such actions will not subvert the normal leasing process, even if minor amounts of coal are lost. An applicant who simply fails to participate or fails to prevail in the activity planning process will not generally be allowed a "second chance" through emergency leasing.

In § 3425.1–4, the language allowing the amount of coal leased to be the amount shown in a mine plan has been deleted in response to those comments that pointed out that no official mine plan can be approved by a regulatory authority showing unleased Federal

coal. Further, the language allowing contracted amounts of coal to control the amount which may be leased under this subpart has been deleted. Several commenters were concerned that this provision might invite abuse of the normal leasing process and of the basic concept of emergency leasing by inviting persons to get contractual commitments and then plead emergency. Because contracts have been used to determine lease reserve amounts and the proposed rulemaking indicated this policy would continue, contracts signed prior to the effective date of this final rulemaking will continue to be recognized as a basis for setting the amount of coal that will be leased under subpart 3425.

Some comments requested that the three-year period within which the operator would reach the coal in an emergency lease application be extended. This was not adopted; the three-year period is consistent with the purpose of this subpart and the amount of time necessary to process a lease application, hold a sale, and issue a lease in time to reach production. One comment requested that the standard for determining the amount of coal in subpart 3425 leases, i.e., annual average level of production, be specified as the production level at the time of the application. This comment has been accepted and is implemented by inserting the word "current" in § 3425.1–4(a)(1) so that the final rulemaking reads, ". . . to maintain an existing operation at the current average annual level of production." One additional comment on § 3425.1–4 requested a relaxation of the emergency leasing provisions for underground mines. No change was made as a result of this comment except to specify clearly that the reserve figure for leases issued under subpart 3425 is for recoverable reserves and not for reserves in place.

As noted earlier, many adverse comments were received on the hardship section of the proposed rulemaking, section 3425.1–5. The concerns raised in the comments were valid and the section has, with one exception described above, been deleted. This section was originally drafted to be applied mainly in areas outside the coal production regions used for Federal coal management. In these areas, coal activity planning would never occur because this broad-based approach to Federal leasing is not justifiable on the minor amounts of Federal coal present. A new § 3425.1–5 appears in the final rulemaking, which focuses directly on potential leasing actions in areas of lower Federal coal ownership. Basically, any coal lease sale outside a major coal production region or, in the case of the Southern Appalachian or Western Interior Regions, outside of the concentrated area of Federal coal ownership, may proceed on the basis of an application from a party interested in acquiring a Federal coal lease. There is no limit on the amount of coal offered for competitive sale in response to these applications.

No comments were received on § 3425.1–6 of the proposed rulemaking, renumbered § 3425.1–7 in the final rulemaking. This section sets the requirements for data that are to be submitted with the lease application. Except for the changes needed to conform this section with the remainder of the subpart and changes needed for clarity, the only difference between the section in the final rulemaking and the section as it appeared in the proposed rulemaking is the addition of the requirement to submit any known information related to paleontological values and to wetlands and floodplains in the descriptive material.

The reasons for rejection of an application are set out in § 3425.1–8 of the final rulemaking, which is § 3425.1–7 of the proposed rulemaking renumbered. The list of reasons for rejection has been shortened simply by stating that applications which violate any applicable regulations will be rejected, rather than enumerating specific requirements from applicable regulations as reasons for rejection. Because of this change, most of the comments on the section are no longer applicable. One comment did point out that reasons (7) and (8) of the proposed rulemaking were judgment factors to be applied by the authorized officer and should be deleted. The two reasons were left in the section because they are important factors and the authorized officer is capable of exercising his judgment on these points.

No change was made in § 3425.2 of the final rulemaking except for the deletion of the word "emergency" in the first line of the section. One commenter objected to the use of the phrase "land use analysis" rather than "land use plans" in § 3425.2. There was no change in this language because its use is consistent with the objectives of this subpart. Another comment on the section requested that bypass lease applications be exempted from the provisions of the section. This change would be counter to the Department of the Interior's policy of strict control of emergency leases, even if it were lawful. The Federal Coal Leasing Amendments Act prohibits lease issuance unless the lands have been included in a comprehensive land use plan or land use analysis and leasing is compatible with that plan or analysis.

Section 3425.3 has been changed to remove any reference to "environmental assessment records," which are the product of internal Bureau of Land Management procedures that may not be retained in their present form. Instead, the term "environmental assessment," as defined in § 3400.0–5 and used in the CEQ regulations governing agency compliance with the National Environmental Policy Act of 1969, has been used. The only other change to this section is the insertion of three lines in § 3425.3(a)(3) that were deleted during the final preparation of the proposed rulemaking due to a mistake in transcription. These lines specifically provide that reclamation potential is an environmental concern to be considered in the environmental assessment. The discontinuity in the language of the section was noted in some of the comments.

Finally, §§ 3425.4 and 3425.5 have been rewritten for clarity. The requirement for a public hearing is stated directly rather than alluded to as it was in the proposed rulemaking. The specific requirement for consistency with the diligence requirements was dropped in favor of a requirement for consistency with all the general lease terms required under the provisions of part 3470 of the Federal coal management program regulations.

Subpart 3427—Split Estate Leasing

The proposed rulemaking on subpart 3427, split estate leasing, included two specific requests for comments. The Department of the Interior received several replies to its request for comments on whether it should accept statements of refusal to consent during land use planning in the same process with surface owner consultation. The opinions expressed in the comments were split. After consulting the comments and studying the appropriate statutes, the Secretary of the Interior decided that the Congress intended that the acquisition of written consent and surface owner consultation be separate processes. Combining them in the land use planning process blurs their differences and thereby weakens both. For this reason, the Secretary decided that surface owners' statements of refusal to consent will not be accepted during land use planning. A further reason for this decision was to ensure that surface owners have all the information developed from the land use plan before they make a final decision

on whether or not to give written consent. This decision is reflected in § 3427.2(a)(2) of the final rulemaking.

The other area on which the Department of the Interior solicited comments in connection with subpart 3427 was on whether the Bureau of Land Management should acquire consents from any qualified surface owners who seek to grant consent to the Secretary of the Interior rather than to any coal company or private party, in order that the coal underlying their land can be considered for leasing. Only four comments were received in response to this solicitation. Three of the comments supported allowing the Bureau of Land Management to negotiate directly for consents. None of the comments was sufficiently persuasive to make the Secretary change his position in the preferred program that the Department of the Interior will not acquire or negotiate consents from qualified surface owners. This task will be left to industry and the private marketplace, although the Secretary will not lease tracts on which written consent is acquired by industry unless: (a) the consent is transferable as provided in § 3427.2(e)(2); and (b) the United States receives fair market value for the Federal coal in issuing the lease (see Solicitor's Opinion M–36909, 86 I.D. 28 (1979)).

In response to several comments that questioned the authority of the Department of the Interior under section 714 of the Surface Mining Act to promulgate portions of the proposal, a reference to a Solicitor's Opinion that clarifies the relationship of surface owner consent to the Department's discretion to lease or not to lease and its obligation to receive fair market value for the leasing of Federal coal has been added to § 3427.0–3. Also, a § 3427.0–7, "Scope," has been added to the final rulemaking. This new section makes it clear that the subpart does not apply to preference right lease applications or to situations in which the coal will be mined by underground mining techniques. These changes, which merely state the law, answer questions posed in several comments.

A comment on § 3427.1 asked that the time in the sale process by which surface owner consent must be submitted be made as late as is allowed by the statute, in other words, through sale to the piont of lease issuance. This change was not adopted because it would conflict with Departmental policy on this point set out in § 3420.2–6(b). This policy was adopted in large part to prevent undue, intense pressure from being applied to the non-consenting surface owner in some cases, and to minimize conflicts with other statutory responsibilities. That latter situation could result in a wholly unwarranted failure to lease. The Department will delete tracts from consideration at a point in the process early enough to avoid whichever of these undesirable situations may be the case.

As mentioned earlier, § 3427.2 has been modified to incorporate the decision of the Secretary of the Interior regarding when qualified surface owners may file statements of refusal to consent. A further modification was made in the section to allow any party with a potential interest to file surface owners' statements of refusal of consent during activity planning, which are then verified under § 3427.2(f). This new procedure in the final rulemaking replaces the language of § 3427.4 in the proposed rulemaking which has been deleted. Proposed § 3427.4 itself was the subject of a great deal of adverse comment raising the point that its language appeared to be espousing management-by-hearsay. Proposed § 3427.4 was deleted from the final rulemaking because it created so much controversy and was generally misunderstood.

Section 3427.2(d) has been revised in response to a comment that its provisions should not apply to all split estate lands, but only to those held by an owner qualified under section 714 of the Surface Mining Act. This comment, which was applicable to other sections of the subpart, is also reflected in the new "Scope" § 3427.0–7.

A few comments requested that § 3427.2(e) be revised to specify that holders of transferable consents be compensated by the successful bidder for the overhead or "administrative" cost of acquiring the consent, as well as any actual consideration already paid to the surface owner for the consent. This change was not made because the Department of the Interior has no obligation to require one bidder to reimburse another bidder for its overhead, salary and related expenses.

The term "interest in the lease sale," which appeared in § 3427.2(e)(1) of the proposed rulemaking, has been changed to "potential interest in the lease sale" to emphasize that a strict legal construction of the word "interest" was not intended as some commenters feared. In this same section, the word "company" is changed to "party" in response to comments. Another change in the section was that consent only has to "allow" certain things to happen (payments to be made or events to occur) to be considered transferable rather than "provide" that they must occur as the proposed rulemaking stated. This change should mitigate the impact of the program decision to require that consent be transferable. Industry should still have an incentive to seek necessary consents, and the Department of the Interior will still accomplish its purpose of assuring that Federal coal is not locked out from consideration and competition for leasing.

Section 3427.2(i) has been amended to require only the publication of the purchase price of the consent in the lease sale notice, with inclusion of its other terms in the detailed description of the tract available to potential bidders and other interested parties. This amendment was made to achieve administrative savings. A comment requested that a reading to the surface owner of his rights be included with the verification of a filing. This action would be inappropriate for the Bureau of Land Management, whose role should be that of a disinterested party in the acquisition and granting of consents. For this reason, the change was not adopted. To ensure that surface owners understand the statutory role they play in coal management decisions, and to assist them to understand consultation and consent procedures, however, the Bureau of Land Management expects to prepare informational materials for distribution to them.

A request was made in a comment to allow refusals of consent to be more easily renounced. This change was not made because it would remove one of the main reasons for having such statements, namely the avoidance of exposing surface owners to continuing pressure to grant consent. Another comment requested that surface owners' refusals to consent be given a specified time to run. This request was not accepted because it would cause unneeded rigidity. The language of the proposed rulemaking, carried into the final rulemaking, will retain the flexibility needed, and serve all of the Department's purposes: refusals will not be lightly made because of their length of life; and surface owners can exclude the coal underlying their lands to avoid continual pressure to consent. The Department expects that a refusal to consent will strongly signal industry that no further efforts should be made to bargain with that surface owner until the plan is revised. Finally, as noted earlier, 3427.2 of the final rulemaking has been modified to incorporate the intent of § 3427.4 of the proposed rulemaking which has been deleted.

Section 3427.3, which requires a filer to attest to the information filed, is unchanged even though one comment requested that the section be deleted.

Section 3427.5 of the final rulemaking, § 3427.6 in the proposed rulemaking, has been modified to delete the requirements that tracts subject to pre-existing consents that are not transferable be leased only through intertract bidding sales. The codification of this firm policy of the Department of the Interior in a regulation might be thought to be a function transferred by the DOE Organization Act to the Secretary of Energy as a regulation related to bidding methods and promoting competition for Federal leases. Consideration is being given to asking the Department of Energy to incorporate this provision in its regulations. The provision was the subject of mixed comments.

Subpart 3430—Preference Right Leases

Subpart 3430 received a significant number of comments. The comments were principally directed to: (1) the provisions of the proposed rulemaking incorporating various unsuitability requirements as lease terms; (2) the unclaimed, undeveloped limitations; (3) the right of the Department of the Interior to use the commercial quantities standard for pending applications; (4) the amount of detail required for a mining plan under the final rulemaking; (5) the extent of the efforts of the Department of the Interior to cancel applications for procedural violations; (6) the confidential treatment to be afforded to reserve data; (7) the application of the surface owner consent provisions of section 714 of the Surface Mining Act to preference right lease issuance; and (8) the determination of royalty for preference right lease applications.

In response to these comments, and as a result of reconsideration of this subpart, including the analysis in the Secretarial Issue Document, many changes have been made in this subpart. These changes have not, however, altered the fundamental effect of the subpart. The subpart continues to require that a person must show he has discovered a commercial coal deposit that he is likely to be able to mine at a profit after consideration of all of the costs of complying with the lease terms and all applicable laws and regulations. The final rulemaking continues to bar mining which cannot be done in accordance with the unsuitability standards and to require a preference right lease to include all current lease terms and requirements.

Section 3430.0–3 has been amended to include a reference to the Solicitor's Opinion which construed the language of section 2(b) of the Mineral Leasing Act, prior to its amendment in 1976 (30 U.S.C. 201(b)(1970)), authorizing the issuance of coal prospecting permits only on unclaimed, undeveloped land.

While it is not express in § 3430.2–1(a), the standards set out in Geological Survey Bulletin 1450–B will govern determinations of reserves in place, recoverable reserves, and other resource determinations that are part of the applicant's initial showing and the Department's final decision on whether commercial quantities of coal were discovered on the permit lands.

Section 3430.2–2 has been revised and a new § 3420.2–3 has been added to the final rulemaking to restore the authorized officer's ability to give a lease applicant an extension of time to supply incomplete information related to the initial showing and unclaimed development.

This authority was omitted from the proposed rulemaking because it was mistakenly believed that all BLM State Offices had already made the 60-day request to all applicants for any necessary additional information. This was not true. The change restores the time periods provided in the May 7, 1976 final rulemaking governing preference right lease adjudication. Section 3430.2–2 has also been amended to allow the authorized officer to request any other information that might be necessary, and § 3430.5 has been modified consistent with this to allow the authorized officer to reject an application if that information is not submitted.

Section 3430.3–1 has been revised to conform to the decisions reached in the Secretarial Issue Document on processing noncompetitive (preference right) lease applications. The Secretary's decision was to process noncompetitive lease applications in the cycle of ongoing land use plans unless the application would not be processed by December 1, 1984. The final rulemaking also gives each lease applicant the opportunity to ask the authorized officer when its application will be processed and to explain how earlier processing of the application will benefit the applicant. If the applicant can show, to the satisfaction of the authorized officer, that processing the application in the normal cycle of land use planning will cause the applicant substantial hardship, the Department of the Interior will, if possible, advance the time for processing the application.

The Secretary's decision reflects two important points to be implemented in these regulations. First, it is the policy of the Department of the Interior to process these applications in concert with land use planning efforts, and where lease operations would be incompatible with the land use plan, to take appropriate action such as including protective stipulations in the lease, seeking an exchange of lease rights or seeking legislation to purchase or condemn the incompatible lease. While compatibility with land use plans is not a legal prerequisite to preference right lease issuance, the land use planning effort for that area, in conjunction with the environmental analysis of the lease application, will yield the data and understanding that will best meet the Department's objectives under the National Environmental Policy Act in preference right lease issuance, and will do so in a much more efficient manner than in a process of individual lease application study. (See *NRDC* v. *Berklund*, 458 F. Supp. 925, 938 (D.D.C. 1978), *appeal pending*.) Where lease applications are processed outside of the planning process, the Department will evaluate land use planning related questions in the environmental analysis of the lease application.

Second, the Secretary's decision reflects the Department's position that it has an obligation to process all applications and after processing, to reject, issue or take other appropriate action within a reasonable time. In view of the resources available to the Department of the Interior, the need for coal and the amount of time needed to comply with the Mineral Leasing Act and the National Environmental Policy Act, the slightly more than five-year period provided for completing processing is reasonable. This is particularly true when one considers that a delay in processing is, in many circumstances, not detrimental to the applicant. During the processing period, the applicant retains control over the lands covered by the application without payment of rent and with no obligation to produce coal as is required by the diligence requirements. The marginal quality of the coal in some of these applications, coupled with the current buyer's market for coal, may make the delay advantageous to some applicants. In instances where the applicant can show that processing delay would clearly be harmful, the final rulemaking gives the applicant a clear course to pursue.

Section 3420.3–2(c) has been revised to state that conditioning or prohibiting operations on all or any part of a preference right lease to protect lands assessed to be unsuitable under the criteria in § 3461.1, or found to be improper for any or all types of mining operations for other environmental or resource management reasons, is the Department's primary tool to protect against adverse environmental effects. The proposed rulemaking retained the possibility, if lease conditions alone were not adequate, of deleting lands from the lease area, rather than leasing subject to conditions. As a general matter, there have been misconceptions about the Federal lands review. In most cases, lands affected by the review will be *conditioned*, not excluded from leases. Changes have been made in the unsuitability criteria to emphasize that the surface management agencies must consider assessing lands as unsuitable for certain stipulated methods of coal mining, as well as for all methods of mining. With respect to preference right leasing, lease conditions and stipulations are even more appropriate than deletion of lands because of the lease applicant's prior expenditures, although either is legally acceptable.

The Department of the Interior has had the authority since 1920 to put necessary terms and conditions in all mineral leases "for the protection of the interests of the United States . . . and for the safegarding of the public welfare." (30 U.S.C. 187). The Mineral Leasing Act was enacted to give the Department of the Interior greater authority over mineral development on public lands, to protect the interests of the entire country in the wise development of the nation's energy minerals, than it previously had. As the Supreme Court said in *Boesche* v. *Udall*, 373 U.S. 472, 481 (1963), the Mineral Leasing Act was passed "to expand, not contract, the Secretary's control over the mineral lands of the United States."

For many years, the Department of the Interior has aggressively exercised this authority and similar authority granted under other acts, such as the 1917 Potash Act, to protect a variety of environmental and natural resource interests. In *Issuance of Permits to Prospect for Potassium Upon Lands Embraced Within Oil and Gas Prospecting Permits*, 51 L.D. 180 (1925), decided soon after enactment of the Mineral Leasing Act, Assistant Secretary Finney advised the Commissioner of the General Land Office that the Department could decide to issue a potash prospecting permit only on the condition that the permittee waive his rights to a patent to one-fourth of the land in the permit, upon discovery of a valuable deposit of potash, and instead accept a lease for the same area. This was done to make the land available for oil and gas development available as well for potash development. *I.A. Smoot*, 52 I.D. 44 (1927). In *Montana Power Co.*, 72 I.D. 518 (1965), the Department decided it had the authority to require a coal lessee to reclaim private surface over Federal coal. Since 1970, the Interior Board of Land Appeals has often sustained the Bureau of Land Management's authority to impose lease terms in oil and gas leases to protect the environment. *Quantex Corp.*, 78 I.D. 317 (1971) (protection of wildlife and watershed values); *Cartridge Syndicate*, 25 IBLA 57 (1976) (protection of archaeological and historic sites); *Richard Cullen*, 18 IBLA 414 (1975) (seasonal access to protect antelope winter range); *William S. Burness*, 1 IBLA 180 (1970) (protection of oil shale resources). This brief synopsis shows that even before the Congress passed the Surface Mining Act, the Department of the Interior had asserted extensive authority to insert appropriate stipulations and conditions in a lease to protect the public interest.

The Surface Mining Act did not contract this authority; it expanded it. The Department of the Interior must conduct a Federal coal lands review and withdraw from leasing or condition coal leases that are issued, based on the results of that review, when available (30 U.S.C. 1272(b)). The Surface Mining Act also requires the Department of the Interior to make sure that all leases which authorize surface mining operations incorporate the requirements of the Surface Mining Act (30 U.S.C. 1273(a)). The Surface Mining Act also specifically bars the approval of mining plans, including those on Federal lands, where the lands have been designated unsuitable for that type of mining operation (30 U.S.C. 1250(b)(4)). Both the Mineral Leasing Act and the Surface Mining Act, as well as the Secretary of the Interior's general management authority over the public lands, clearly give the Secretary the right to put terms in a lease to address the adverse environmental impacts that the Congress sought to prevent or mitigate with the enactment of the Surface Mining Act.

The existence of a preference right lease application is not a shield to the exercise of this authority to set proper lease terms. The Department has a long-standing practice of in no way guaranteeing to any preference right lease applicant that the lease he might receive will contain the terms and conditions in use at the time the permit was issued. In 1935, the Department of the Interior rejected the objection of an oil and gas preference right lease applicant to a lease provision regarding unitization of lease operations. *Montana Eastern Pipe Line Co.*, 55 I.D. 189 (1935). The decision states that the Department of the Interior has the right to set lease terms and that this construction of the Mineral Leasing Act has "been followed from the date of its enactment" and has included modifications of the lease form to require "compliance with the provisions of the codes of fair competition." 55 I.D. at 191. Finally, the Assistant Secretary rejected the contention that a term cannot be in the lease if it was not in the permit:

> The permittee, in proceeding under the permit, is not entitled to rely on the fact that he will secure the form of lease in use at the date his permit is acquired. The act provides that the permittee, upon the establishment of the required facts, shall be granted a lease, but it does not contemplate he shall acquire a vested right to a particular form of a lease. The terms and conditions of a lease . . . are left to the discretion of the Secretary. . . . Certainly it seems that if an alteration in conditions . . . requires the modification of the lease form to effectuate the policy of the Act, the Secretary not only may, but should, so modify the lease form.

Id. at 191, 192. This is equally true now. While a preference right lease applicant has a "valid existing right" to have its application adjudicated in a reasonable period of time, and a right to be issued a lease or otherwise compensated if it shows under the Department's regulations that it discovered coal in commercial quantities, *NRDC v. Berklund*, 458 F. Supp. 925 (D.D.C. 1978), *appeal pending*, it has no "valid existing right" to have any particular set of lease terms or conditions because the Secretary's decision on lease terms is discretionary. See *American Nuclear Corporation v. Andrus*, 434 F. Supp. 1035, 1037–38 (D. Wyo. 1977). These principles were recently endorsed again in *Utah International, Inc. v. Andrus*, Civil No. C77–0225 (D. Utah, June 15, 1979).

For these reasons, the Department of the Interior has the authority to impose lease terms to require a preference right lease applicant to mine coal only in accordance with the findings of the Federal lands review. This is true even where the overall effect of the conditions, coupled with the lease applicant's obligations to meet all other lease terms and to pay rent, royalty, meet diligence requirements and the lease applicant's inability to receive a

sufficiently high price for the coal that can be mined, results in the Department's finding that the applicant does not have the reasonable likelihood of making a profit. *NRDC v. Berklund, supra.* The only limitations on the authority to impose such lease conditions are the provisions in section 522 of the Surface Mining Control and Reclamation Act itself, which exempt certain operations from the application of unsuitability judgments based on that section—for instance, where the operator has made "substantial legal and financial commitments." In an appropriate case, the Department would not impose lease conditions on a preference right lease application where the applicant had made the expenditures required by 43 CFR 3400.0–5(uu).

As stated earlier, the proposed rulemaking provided that lands in areas assessed to be wholly unsuitable in the Federal lands review would be excluded from the lease area under the final rulemaking, any land that can otherwise properly be included in the lease (i.e., that contains coal, and that was not "claimed" or "developed" at the time of permit issuance, and that was not withdrawn from leasing) should be included in the lease with the appropriate protective stipulations. As one comment suggested, the Department of the Interior might, if appropriate, limit a lease to underground mining only, just as it has limited oil and gas lease to directional drilling only to protect surface uses. The final rulemaking reflects the long-standing position that the Secretary may condition mineral leases for such reasons.

Section 3430.5–1 has been revised to state clearly that the Department of the Interior will reject those applications derived from permits issued in violation of the "unclaimed, undeveloped" limitation of the statute, and those applications defective for failure to meet other requirements, such as failure to pay rent on time, or lack of qualification to hold a lease. These grounds were implicit in the proposed rulemaking but have been made explicit in the final rulemaking.

Section 3430.5–1 has also been revised to make it clear that the Department may reject a noncompetitive lease application after reviewing the initial showing on the substantive ground that the applicant failed to meet the commercial quantities test. For example, the Department may reject all or part of an application for failure to meet the test if the initial showing fails to show any coal or such limited or low quality coal that mining could not be expected to take place. This authority will be exercised only in clear situations; where there is reasonable doubt, the application will be processed fully. The provision avoids any unnecessary expenditure of time and personnel on applications that have no merit.

The final rulemaking does not adopt a request by one commenter that the Department reevaluate whether the Geological Survey properly determined that the "existence or workability" of the coal in the lands was not known at the time each prospecting permit was issued or extended. This finding was a statutory prerequisite to issuance of prospecting permits. This initial determination was a technical one which was the responsiblility of the Geological Survey. In most instances, these determinations were made long ago, as early as 1964 for some permits. In these circumstances, it is not equitable for the Department now to second-guess these determinations where the Bureau of Land Management requested the Geological Survey to decide whether lands were eligible for prospecting and the Geological Survey responded that they were. The Department will continue to give these determinations a presumption of administrative regularity and assume that all necessary findings were properly made. The Department will not systematically inquire into the correctness of those decisions. Although the Department has not altered the final rulemaking to adopt this comment in full, it will revise its adjudication procedures to satisfy part of this commenter's concerns. If a case file does not contain the required conclusion by the Geological Survey that a prospecting permit could issue, then the presumption of administrative regularity does not apply, and the Department will no longer assume that the proper findings were made. The Department will examine in such a case whether the permit was properly granted. If this examination shows that the existence and workability of the coal were known at the time of permit issuance, the lease application will be rejected.

Some minor changes have been made to various sections of this subpart to clarify the application of the unclaimed, undeveloped requirements and to reflect the need for the analysis of certain alternatives in complying with the National Environmental Policy Act.

Subpart 3431

Subpart 3431 implements the authority given the Department of the Interior by the Act of October 30, 1978, to sell to the holder of a right-of-way, issued under Title V of the Federal Land Policy and Management Act, coal that will be removed as a necessary part of the construction of the right-of-way.

One comment on subpart 3401 suggested that necessary rights-of-way be assured all Federal coal lessees as part of the lease. While this subpart does not address these types of rights-of-way, the Secretary of the Interior decided that the acquisition of necessary rights-of-way for transportation and support facilities used in connection with Federal leases will not be assured or guaranteed by the Bureau of Land Management.

Several questions were raised in the comments about whether this was an application procedure, or whether the Department of the Interior might require someone to extract coal under this subpart. As § 3431.2(d) provides, this subpart applies to applicants or holders of rights-of-way across public lands. In exercising its discretion to grant or deny a right-of-way, the surface management agency may include conditions related to the extraction and sale of the coal in the right-of-way grant.

Section 3431.1 has been revised to track the language of the statute. As several comments pointed out, the statutory provision is intended to describe the case where it is physically impossible to construct the right-of-way without digging or affecting the Federal coal, not any legal requirement that the holder of the right-of-way extract it.

One comment noted the absence of any tonnage limitation in the subpart. There is no express statutory limitation. The removal of coal, however, must be incidental to the right-of-way; mining that coal cannot be the purpose of the right-of-way. The ultimate limits on the subpart are derived from the Secretary of the Interior's discretion to reject a right-of-way application that does not meet the standards for a true right-of-way, and the Surface Mining Act, which may require a mining and reclamation permit if the amount of coal to be removed is substantial enough. The public interest is protected by the requirement that fair market value be received for the coal, no matter how much is extracted. Section 3431.2(b) (where Federal coal lease development is involved) and section 3431.2(c) (where it is not) have been revised to clarify that formal maximum economic recovery will not be required. Conservation of the coal and other resources will be required, however, as will compliance with the Surface Mining Act, and health and safety laws as otherwise required.

Subpart 3432—Lease Modifications

Subpart 3432 prescribes the provisions for the modification of existing leases to include contiguous unleased acreage. Several commenters objected to the prohibition against the addition of lands to a lease by modification if the surface of split estate lands was owned by a qualified surface owner. This prohibition is required by section 714 of the Surface Mining Act, the surface owner consent provision (30 U.S.C. 1304(b)). That section states that coal subject to its provisions, where the surface is held by a qualified owner and the coal is to be mined by other than underground techniques, may only be leased under section 2 of the Mineral Leasing Act. Section 2 is the competitive leasing section, while section 3 of the Mineral Leasing Act authorizes lease modifications. (Memorandum on November 2, 1978, from Associate Solicitor, Energy and Resources, to Director, Office of Coal Leasing, Planning and Coordination, "Legal Issues in the Draft Coal Regulations"). This conclusion, which flows directly from the statutory language, does not mean that the coal cannot be leased, only that it cannot be added to a lease by modification. It could still be leased under subparts 3420 or 3425.

Section 3432.2(c) was amended to make it clear that the Department of the Interior has no intention of attempting to ignore the requirement of the Act of October 30, 1978, that the royalty on the lands in the original lease (issued prior to enactment of the Federal Coal Leasing Amendments Act on August 4, 1976), be unaltered by addition of the new acreage subject to a new royalty rate.

A comment pointed out that § 3432.3(a) failed to provide whether a modification to a lease issued *after* August 4, 1976, would result in the adjustment of that original lease's royalty. It could, but the final rulemaking is not revised to speak to the question. The Department of the Interior is not inclined to exercise that discretion on other than a case-by-case basis, if and when such a case arises.

Subparts 3435, 3436, and 3437—Exchanges

Subpart 3435 of the final rulemaking is not significantly different from the proposed rulemaking. It carries forward the existing regulations issued in December 1977 for the issuance of leases or lease interests in exchange for the relinquishment of coal leases or preference right lease applications. The parallel non-coal mineral lease exchange regulations will remain in Group 3500 of Title 43 of the Code of Federal Regulations. The final rulemaking carries forward the requirement that a preference right lease applicant must demonstrate the discovery of commercial quantities of coal on the applied-for lands before an exchange involving those lands can be consummated.

The final rulemaking also carries forward the policy enunciated by the Department of the Interior in hearings on S. 3189, the generic coal leasing exchange authority legislation in the 95th Congress, that the Department would seek authority to consummate an exchange only in a case where the constraints of the Surface Mining Act could not lawfully be applied to prevent environmentally unsatisfactory mining from occurring.

One important change in the final rulemaking was to conform it to the provisions of the Federal Coal Leasing Amendments Act, requiring consultation with the Attorney General in the issuance of Federal coal leases. A new § 3435.3–7 has been added to the subpart to accommodate this requirement whenever a coal lease would be issued in exchange. The new section incorporates the coal holdings review and procedures set out in § 3422.3–4 of this rulemaking.

Several comments on this subpart questioned the authority for it. The reference to section 1 of the Act of October 30, 1978 is self-explanatory. That section authorizes the Secretary of the Interior to consummate several named possible exchanges. The reference to section 510(b)(5) of the Surface Mining Act is likewise self-explanatory. That section expressly authorizes the Secretary of the Interior to consummate exchanges dealing with Federal leases (and private coal) in Western alluvial valley floors. The authority for 43 CFR Subpart 3526, the non-coal mineral lease exchange regulations from which subpart 3435 is largely derived, is set out in a memorandum of November 9, 1976, from the Associate Solicitor, Energy and Resources, to the Director, Bureau of Land Management, "Authority for exchange of rights under the Mineral Leasing Act." That memorandum discusses the authority to issue sodium, phosphate and potash leases by "advertisement, competitive bidding, or such other methods as the Secretary may by general regulations adopt." That precise authority was repealed for coal leasing by the Federal Coal Leasing Amendments Act of 1976. The November 9 memorandum goes on to describe how *cash* bonus bidding is not required for competitive coal leasing. This fact underlies the concept of a "certificate of bidding rights." Coal lease modifications in exchange are not discussed in that memorandum, but they are simply derived from the Secretary's discretionary authority in section 3 of the Mineral Leasing Act to modify coal leases (30 U.S.C. 203), the general Congressional policy that Federal property and natural resources should be disposed of only for fair value (31 U.S.C. 483a and 43 U.S.C. 1701(a)(9)) and the Secretary's authority to promulgate regulations necessary and proper to carry out the purposes of the Mineral Leasing Act (30 U.S.C. 189).

By and large, most of the comments were concerned with the lack of detailed standards and procedures in the regulations for the implementation of the subpart. The detailed procedure for carrying out the regulations will be established in the Bureau of Land Management instruction memorandum or manual sections covering this subject. This final rulemaking sets forth a general framework of standards and procedures for a very complex process which will be delineated in detail in instruction memoranda or manual sections.

Unlike coal lease modifications, exchange coal leases are not barred on split estate lands. In fact, an exchange lease for lands in an alluvial valley floor under section 510(b) of the Surface Mining Act can be issued without surface owner consent, since section 510(b)(5) grants the exchange authority "notwithstanding any other provision of law." An exchange lease under section 1 of the Act of October 30, 1978, may be subject to surface owner consent, but it can still be issued, since section 1 grants the exchange leasing authority notwithstanding any law to the contrary, and "notwithstanding . . . section 2(a)(1) of the Mineral Leasing Act." If the surface owner consent provision were construed to be "contrary" to section 1, then it would be inapplicable to such an exchange lease. The two provisions might be compatibly construed, however, if section 714(b)'s injunction to lease split estate coal to be surface mined only through competitive bidding is seen as overridden by the "notwithstanding" clauses of section 1.

For the purposes of § 3435.3–6(b), issuance of a certificate of bidding rights in an exchange is presumed to be a multi-state transaction.

One comment made the observation that § 3430.5–3(b) contained adequate criteria for the exchange of preference right lease applications and there was

no need for a general subpart dealing with exchange. These subparts provide procedures as well as substantive criteria, and deal with lease exchanges as well as preference right lease application exchanges. Other comments spoke of unnecessary burdens placed on a lessee who is a party to an exchange. No person can be compelled to consummate an exchange. Each lessee or lease applicant can assess the "burdens" of the process in deciding whether to enter into exchange negotiations. These and other points were carefully considered during the preparation of the final rulemaking but did not result in any changes.

Subpart 3436 of the final rulemaking implements the alluvial valley floor lease exchange authority contained in the Surface Mining Act. Section 3436.0–1 has been expanded to include the language "or materially damage the quantity or quality of water in surface or underground systems that supply these alluvial valley floors," to be fully consistent with section 510(b)(5) of the Surface Mining Act (30 U.S.C. 1260(b)(5)). Further, § 3436.2(a) has been expanded to enable the Department, as well as any qualified lessee, to propose an exchange.

Most of the comments on this subpart were concerned with § 3436.1(a). Several comments favored deleting the phrase "and who otherwise meets the criteria in the proviso in § 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977." Others were of the opinion that the requirement of substantial financial and legal commitments is too restrictive. The language of § 3436.1(a) is necessary in its entirety to comply with the provisions of the statute, and no change has been made in the section. Several concerns were also expressed in the comments about the procedures under which this subpart would be carried out. As discussed above, the details of the process will be established as part of the Bureau of Land Management's instruction memoranda or manuals provisions on coal management.

Subpart 3437 is designed to assist in implementing the alluvial valley floor land exchange authority (private lands for Federal lands, with no lease interest involved) contained in the Surface Mining Act. No significant changes were made between the proposed rulemaking and the final rulemaking. Note, however, that all exchange requests that are found qualified will be handled in accordance with the general exchange provision in subpart 2200 of Title 43 of the Code of Federal Regulations. Therefore, the provisions of this subpart only provide the qualifying criteria for coal land exchange requests that may result in the consummation of an exchange under subpart 2200. As in subpart 3436, the purpose section has been revised to include the statutory language "or materially damage the quantity or quality of water in surface or underground systems that supply these alluvial valley floors."

A large percentage of the comments on this subpart were concerned with what was regarded as too strict an interpretation of what is a "substantial financial and legal commitment." These comments were directed to proving that the term "substantial *financial and legal* commitments," as used in the proviso to section 510(b)(5) of the Surface Mining Act, the so-called Wallop Amendment, is different from the term "substantial *legal and financial* commitments" used in section 522(a)(6) of the Surface Mining Act, the exemption from the application of certain unsuitability criteria. The Department is researching whether this distinction is soundly based in law or policy. The final regulations simply use the different statutory phrases, and do not define the former phrase used in subparts 3436 and 3437. The Department will conclude whether the phrases have the same or different meaning in some appropriate forum other than this rulemaking, whether in adjudicating an exchange proposal, in a policy statement or in a legal opinion. As discussed above, this language is taken directly from the Surface Mining Act. Other comments relating to the detail of the exchange process will be handled, as discussed above, by internal Bureau of Land Management directives rather than in this rulemaking.

Section 3437.1–1 was changed to consider the owner or his lessee's substantial financial and legal commitments, in recognition that the landowner and coal operator may not be the same. If an exchange were consummated, the deed of Federal lands would be issued to the landowner, not the operator. Whether or not the owner makes whole the operator-lessee whose efforts (investment or permit application) led to qualification for an exchange will be a major consideration in assessing whether it is in the public interest for the Secretary to exercise his discretionary authority to consummate an exchange.

Subpart 3440—Licenses to Mine

The provisions of subpart 3440, which govern licenses to mine coal for domestic use, were restructured but not revised in substance. The subpart collects the requirements to mine for domestic use and combines them in one place. Several comments asked for the inclusion of a definition of the term "domestic use." The definition has not been added to the final rulemaking, but in common usage, domestic use embraces burning coal in a fireplace, boiler or elsewhere in a house. Section 3440.1–3 contains what amounts to a definition by prohibiting nonhousehold uses. Another comment wondered why a corporation could not hold a license to mine. The statute (30 U.S.C. 208) authorizes only two classes of corporations to hold a license to mine—municipalities and relief agencies.

Subpart 3451—Readjustment of Leases

Subpart 3451 of the proposed rulemaking concerns the readjustment of coal leases. It has been substantially revised as suggested in a number of comments and to conform to the Secretary of the Interior's decision to readjust lease royalties to the prescribed statutory and regulatory minimum rates. A new paragraph 3451.1(a)(2) implements that decision.

Comments received from industry objected to the Department of the Interior's assertion of the authority to readjust leases when the lessee was not so notified at the 20-year anniversary date, and to readjust leases with anniversary dates preceding enactment of the Federal Coal Leasing Amendments Act on August 4, 1976, to conform to the minimum royalties required by law after August 4, 1976. The Secretary of the Interior, acting through the Board of Land Appeals, has reaffirmed the Bureau of Land Management's authority to make such readjustments, *California Portland Cement Co.*, 40 IBLA 339 (May 10, 1979), and it is the Department's policy to proceed with these readjustments.

Several industry comments also objected to section 3451.1(b), which is consistent with the readjustment policy discussed above, and applies to leases with anniversary dates between August 4, 1976 and June 1, 1980. As evidenced by section 3451.1(d), the Department of the Interior is meeting the concern behind the industry objections by providing that beginning with June 1, 1980, failure to notify the lessee of readjustment prior to the readjustment anniversary date will constitute a waiver of the right to readjust. In turn, this provision was roundly criticized by public interest groups in their comments because they regarded it as an abrogation of authority. The Department's position is that while it is

wholly lawful to readjust existing leases that were not readjusted on, or where notification of readjustment did not occur before, their anniversary dates, the Department will, beginning with June 1, 1980, assure timely and competent administration of leases by self-imposition of the sanction of waiver. This will guarantee accountability, and will prevent any future situation like that which prevailed with respect to lease readjustments during the early 1970's. On such leases, the notice whether the lease will be readjusted or not will be sent prior to the readjustment anniversary date, or the opportunity to readjust will be lost.

Section 3451.1(c) has not been changed in substance, although the last line of the section has been revised—the provisions of the readjusted lease will incorporate the regulatory diligence requirements.

Section 3451.1(d) was also revised to remove the unintended implication, found by one commenter, that the Department of the Interior intended to readjust leases prior to the 20-year anniversary date of the lease.

Section 3451.1(e) has been revised at the request of the Department of Justice to delete the requirement that all readjustments must go through the same submission of coal holdings information and antitrust review provided for lease issuance. The Department of Justice seeks to review the antitrust implications of only those cases where coal holdings change ownership or control, such as lease issuance or lease assignment. The Department of Justice will continue to be notified of readjustments, however, in case it wishes to exercise its statutory right to review readjustments.

One commenter was concerned that § 3451.2(c) reserved to the authorized officer the authority to nullify the lessee's right to appeal an adverse decision under 43 CFR 4.400. It does not; it is intended to reserve some discretion to the authorized officer in establishing procedures for the discussion and settlement of issues before he issues an appealable decision.

Subpart 3452

Section 3452.1–1 was criticized by one commenter who felt that maximum economic recovery would be frustrated by the acceptance of any relinquishment of coal reserves in a lease. No change was made in the section because the requirement of maximum economic recovery is one of the important components of the public interest to be considered in determining whether it is in the public interest to accept a relinquishment under this section.

Section 3452.1–2 has been revised in accordance with the Department of the Interior's practice of allowing a relinquishment, upon approval, to relate back to the date of its filing. Thus, if a relinquishment were filed on January 1, it would not be accepted until rentals accrued up to January 1 were paid. Even if the back rentals were not paid and the relinquishment not accepted until June 1, however, no rental would accrue between January 1 and June 1.

Section 3452.2 has been edited to use the parallel structure "default, breach or cause of forfeiture" whenever appropriate. Section 3452.3(a) was revised, in response to a comment, to add "continued operation." It was also revised to delete "or readjusted on or after August 4, 1976," since the Department of the Interior regards that provision of section 6 of the Federal Coal Leasing Amendments Act as applying only to leases *issued* after August 4, 1976. Finally, § 3452.3(b) was erroneously typeset and the exchange-related portions of the proposed section have been relocated in section 3461.4 of the final rulemaking.

Subpart 3453—Transfers of Leases

The provisions of subpart 3453 governing transfers of leases and interests in leases have been revised in several major respects to conform to the Secretary of the Interior's decisions on the subject. The Secretary's decisions establish a policy that the Department will more aggressively monitor the resale of Federal leases for reasons discussed below relating to specific changes in the rules.

Section 3453.2–2(a) has been amended to make it clear that it is record title interests, not all interests, that must be filed for approval. Section 3453.2–2(b) has been revised to make it clear that the statement of "holdings" in question is coal lease *acreage* held under the Mineral Leasing Act; it is not related to the coal holdings information the Department of Justice may review. Section 3452.2–2(e) is added to assist the Department of Justice in its review of the competitive impacts of changes in Federal coal lease holdings. While assignments are not listed in section 15 of the Federal Coal Leasing Amendments Act, which provides for Department of Justice review, review of assignments is authorized under other provisions of the Mineral Leasing Act designed to regulate the assignment of leases to assure the absence of monopolistic holdings of Federal leases and to assure the sale of Federal coal to the public at reasonable prices (memorandum of March 5, 1979, from Associate Solicitor, Energy and Resources, to Assistant Secretary, Energy and Minerals).

Section 3453.2–2(f) is added to implement the Secretarial decision that the Department of the Interior be fully informed of the value paid or promised for all lease transfers. This will aid the Department of the Interior in its effort to achieve fair market value in new sales; these transfers are the best possible comparable sales data. The information will be essential to the study of the overriding royalty limitation in subpart 3473 of which the Secretary has directed review. In addition, the Department will also be able to establish whether or not current transfers are development-oriented or speculation-oriented, and whether the consideration paid for the transfers promotes or hinders development, and how lease transfer may affect the price at which the coal is sold.

A new § 3453.2–2(g) assures confidential treatment of all proprietary data submitted to comply with the two new subsections (e) and (f) dealing with the consideration paid for a transfer and Department of Justice review of transfers. Section 3453.2–5 has been revised to clarify what happens in the creation of a new lease by the transfer of part of the acreage of a lease—the terms of the new lease are identical to the terms of the old lease.

Section 3453.3–1 lists the deficiencies in a request to approve a transfer that will lead to rejection of the assignment if not cured after notice under § 3453.3–2. Antitrust review information and transfer consideration information have been added to the list.

Subpart 3461—Federal Lands Review—Unsuitability for Mining

Each of the twenty-four unsuitability criteria set forth in proposed subpart 3461 was reviewed by the Secretary of the Interior and its specific form and language passed upon. The Federal lands review directed by section 522(b) of the Surface Mining Act was thus a central portion of the Federal coal management program decision. The criteria were field tested twice. The most recent test was completed and its results, in the form of a BLM Report, were made available to the public on May 1 and were forwarded in time for circulation within the Department of the Interior and for debate before the Secretary of the Interior. The process for applying the criteria—when during land use planning; with what public participation; in consultation with

whom—were dissected and examined by the Department, and the concepts of the system established in this subpart were personally endorsed or adopted by the Secretary of the Interior in his June 1 coal program decisions. The 69-page Secretarial Issue Document on unsuitability and the 10 pages of Secretarial decision sheets on unsuitability in the publicly-available Secretarial Issue Document on the Federal Coal Management Program, attest to the Department of the Interior's commitment to a sound Federal lands review. This subpart chiefly implements these Secretarial decisions and policies.

In the final rulemaking, the subpart has been rearranged to give the criteria themselves their due prominence as § 3461.1. The generic unsuitability exception for underground mining operations is made a separate provision in § 3461.2. The assessment procedures to be followed by the surface management agency follow in § 3461.3, with the differences in those procedures on leased and unleased Federal lands set out in § 3461.4. The relationship of the surface management agency's unsuitability *assessment* petition and the unsuitability *designation* process of the Office of Surface Mining is set out and clarified in § 3461.5.

Section § 3461.0–6(c) was deleted to be consistent with the evolving relationship between the Bureau of Land Management and Forest Service's unsuitability *assessments* and the Office of Surface Mining's *designations*. The surface management agencies and the Office of Surface Mining's mandatory criteria, the prohibitions against leasing in section 522(e) of the Surface Mining Act, should be identical; there is nothing "additional," as the proposed regulations had it, for the latter agency to apply. Any additional discretionary authority to designate lands unsuitable found in the Office of Surface Mining's regulations is simply not a part of the Federal lands review to be considered by the Bureau of Land Management and the Forest Service.

A new § 3461.0–7 has been added to erase confusion about the scope of the criteria themselves and what the assessment pertains to—how all or any specific methods of coal mining will affect the listed value.

In each listed criterion, the phrase "and mining operations approved" was deleted from any exceptions to the criterion to: (a) make it clear that these are Bureau of Land Management and Forest Service (surface management agency), not Office of Surface Mining rules; and (b) avoid implying that lease issuance certifies that the Office of Surface Mining will approve a mine plan under certain conditions or at all. This uniform revision conforms to the Department's treatment of the issue, central in the Federal lands review, of the adequacy of the data available at the time of land use planning to aid in these assessments. In other words, an area may be carried forward to activity planning under § 3461.3–1, and deleted from further consideration upon acquisition of the needed data in writing the tract profile or elsewhere during activity planning (or in the case of potential alluvial valley floors, carried through activity planning and leased) without any assurance that mining operations will be approved. Any relevant data available to the Office of Surface Mining at the time of mining permit issuance cannot be ignored.

Another general change in the criteria involved the inclusion of the statutory exemption for operations existing on the date the Surface Mining Act was enacted. This exemption applies to all the section 522(e) mandatory criteria. In addition, the language of the exemption from all section 522(a) criteria, "substantial *legal and financial* commitments," was conformed to section 522(a)(6) of the Surface Mining Act (30 U.S.C. 1272(a)(6)).

One of the major recommendations of the Bureau of Land Management Report on unsuitability was, both procedurally and substantively, that the "exceptions" in the proposed rules be wrapped into the "criteria." The test application of the criteria, using the test procedures, raised false expectations and false disappointments when substantial areas were covered by a criterion and, later, major portions of the area were found to be covered by an exception. The separate application of the exceptions was generally an expenditure of time and effort with no compensating benefits. In addition, by applying the exceptions separately, the Department *appeared to be* reacting to the substantial acreages found unsuitable by excepting nearly equivalent acreages. In fact the Department was arriving at the originally intended result, the area properly found to be unsuitable. Where feasible, the final criteria avoid these appearances by incorporating the "exceptions" into the "criteria" themselves.

Issue Paper No. 1 on the unsuitability criteria in the Secretarial Issue Document on the criteria contains reference to the nature of the comments received on each criterion, so the comments will not be described at length in the following discussion of the individual criteria.

Criterion Number 1. The Secretary of the Interior deleted buffer zones around the Federal lands systems from the criterion. Buffer areas remain, of course, the appropriate subject of multiple use tradeoffs in the planning process; they are just no longer part of this unsuitability criterion itself. The Secretary of the Interior concluded that the Forest Service should, using these criteria, be delegated the Secretary of the Interior's authority under section 522(b) of the Surface Mining Act to conduct the Federal lands review on National Forest System lands. Consistent with that decision, criterion number 1 has been amended to speak to the mandatory protections in section 522(e) of the Surface Mining Act against surface coal mining operations in national forest. As the portion of the criterion protecting lands proposed for inclusion in the federal lands systems is derived from section 522(a) of the Surface Mining Act, the section 522(a)(6) exemptions were added to apply to lands proposed for inclusion.

Criterion Number 2. The Secretary of the Interior deleted the portion of the criterion dealing with agricultural leases of Federal surface. Such leases will be honored, but their terms are usually less than the full life of a comprehensive land use plan. Thus, the land need not be found unsuitable throughout the life of the plan. Because agricultural leases are no longer part of the criterion, the related exception, which drew several comments because it was missing a "not," has been deleted also.

Criterion Number 3. Two changes have been made to comply with section 522(e) of the Surface Mining Act: "highway" to " road;" and "an occupied public building" to "any public building." The Secretary required that the permission of an occupant in exception three must be in writing to assure verification.

Criterion Number 4. The exception was folded into the criterion.

Criterion Number 5. The Secretary of the Interior deleted the inclusion of Class II lands, and incorporated the exception into the criterion.

Criterion Number 6. The Secretary of the Interior adopted the language, distilled from the Bureau of Land Management's Task Force recommendations, that requires the concurrence of the land-using entity before a lease can issue. In response to comments received, however, it requires that the land actually be in use for the permitted scientific purpose for the lands to be assessed as unsuitable.

Criterion Number 7. The Secretary of the Interior adopted the version which

includes the State Historic Preservation Office as a consulted entity. The buffer zone is retained; but the qualification is made that the criterion only applies to sites or objects *on Federal lands*. The protection of objects not on Federal lands remains governed by the relevant historic protection acts and, to the extent they are not controlling, multiple use considerations. The exemptions clarify the different sources of authority for properties listed in, and properties just eligible for inclusion in, the National Register.

Criterion Number 8. This criterion remained essentially unchanged.

Criterion Number 9. This criterion was revised to conform the exception in the Assistant Secretary, Fish and Wildlife and Park's recommendation to the Secretary of the Interior, dated May 30, 1979. The language more closely follows the consultation procedures to be used under revised section 7 of the Endangered Species Act (16 U.S.C. 1536).

Criterion Number 10. This criterion has been revised only in that the word "deemed" was changed to "determined" as recommended by the Bureau of Land Managment Task Force.

Criteria 11 and 13 drop fixed distance buffer zones in favor of variable buffer zones that take into account terrain and prey habitat. Both criteria are revised to require consultation with the Fish and Wildlife Service in setting buffer zones.

Criterion Number 12. This criterion was not changed by the Secretary of the Interior's decision.

Criterion Number 13 was revised as indicated above, and was revised to exclude the kestrel (the common sparrow hawk) from the class of protected falcons.

Criterion Number 14 was unchanged.

Criterion Number 15. This was the most controversial criterion, while at the same time the most misunderstood and likely to exclude the most land. Changes were made to clarify it and limit its applicability to less land. First, the criterion does not allow any state the determinative say in how Federal lands will be used. The Bureau of Land Management or the Forest Service and the state must both agree that the lands meet the criterion before they are assessed as unsuitable. Thus, if the state insists that certain lands are important habitat but the surface management agency disagrees, the criterion is not met and the land is not unsuitable. The same is true with the roles reversed. Second, the Secretary of the Interior decided to delete the buffer zone. Third, the Bureau of Land Management Director's recommendation that the listed habitats become examples, not an exclusive list, was adopted. Fourth, the term "most critical" is adopted in subsection (1)(ii) to make it clear that not every critical winter range qualifies, nor that most (i.e., the majority of) critical winter range qualifies. The phrase covers the prime ranges essential to the maintenance of the specific population.

Criterion Number 16. This criterion was revised to require consultation with the Geological Survey. Exception (i) was deleted in its entirety, and exception (ii) was incorporated into the criterion as recommended by the Bureau of Land Management Task Force.

Criterion Number 17 has been revised to require that the non-adverse impact of leasing on the watershed be demonstrated in a specific, probative fashion. The exception was revised to require the written concurrence of the governmental representatives of users of the watershed, instead of the impractical proposed provision for concurrence by individual water users.

Criteria 18 and 19 are substantially unchanged. Criterion number 19, the alluvial valley criterion, is the one criterion about which the surface management agency is, by the very nature of the drilling needed to determine its applicability, likely to have the least adequate, available data at the time of land use planning. The Secretary of the Interior has retained the criterion because it should become progressively easier to apply as surface management agencies develop expertise in applying the guidelines for the identification of such lands, and as regulatory authority actions on mining permit applications "maps" the valleys of the western coal fields. This criterion is, however, expressly treated in the assessment procedures as an exception from the requirement that a tract for which inadequate data prevented a complete unsuitability assessment during land use planning will be deleted from activity planning if the data are not available by the time of the final environmental impact statement on the regional lease sale that includes the delineated tract. Even if it is not known whether a tract is in an alluvial valley floor, it may be held for sale and leased, subject to express provisions about compliance with the Office of Surface Mining's alluvial valley floor provisions in the issuance of a permit to mine.

Criterion Number 20 was approved by the Secretary of the Interior without substantial revision; only the consultation obligations in the exception were made clearer. Some comments misunderstood exception (i). That exception is designed to allow the Secretary to adopt such a criterion without jeopardizing recently finished land use planning efforts, including expensive and time-consuming inventory processes. A state with a specific concern for a resource value in a specific area should be able to introduce its concern early enough in the surface management agency's planning process for that area so that the concern, if its adoption as an unsuitability criterion is in the public interest, will be applied in the planning for that specific area. If adoption of a state-proposed criterion would moot completed planning or require the reopening of adopted land use plans, the Secretary of the Interior could well be deterred from adopting any new criterion.

The Secretary of the Interior deleted several criterion that were part of the proposed rulemaking. He deleted proposed criterion (p), wetlands, with the directive that the Department's obligations under the relevant Executive Orders and other authorities be fully examined and new options be presented to him. He deleted proposed cirteria (t), prime farm lands, and (v), reclaimability, for the reasons that: these determinations cannot be made by the Bureau of Land Management at the pre-lease stage without significant expenditures of money and personnel; and the values are fully protected in the mine plan approval process under the Office of Surface Mining's permanent program regulations. This decision is supported by the fact, discussed in relation to preference right leasing, that the Federal land review under section 522(b) of the Surface Mining Act can be carried out by conditioning leases, as well as by assessing lands as unsuitable and entirely excluding them from consideration for leasing.

The Secretary of the Interior also deleted proposed criterion (x), buffer zones for State lands designated unsuitable. This criterion was deleted for the reasons that: (a) it appeared to be a way that the States could control unsuitability assessments on Federal lands, and control the Federal lands review, which might be in derogation of section 523 of the Surface Mining Act; (b) any value not recognized in the Federal criteria could be proposed, and if the Secretary found it meritorious, adopted as part of the Federal land review on its own merit under criterion number 20; and (c) like other buffer zone provisions, its purpose could be served as well in the multiple use tradeoff stage of planning.

The Secretary of the Interior also concluded that two new potential criteria should be studied: prevention of significant deterioration of air quality; and sole source aquifers. These, along with wetlands, will be the subject of further Departmental inquiry.

Section 3461.2, the underground mining exception, has been revised only to make it consistent with the final rulemaking usage: the term "assessment" of unsuitability; and the use of the definition of the term "surface coal mining operations." Its substance remains, and it has been relocated to reflect its importance as a potential exception to any criterion in § 3461.1.

Section 3461.3 is designed to implement the Secretarial endorsement of the unsuitability assessment procedures set out in the Secretarial Issue Document, in Issue Paper No. 1, pp. 12–16. These procedures were derived from the Bureau of Land Management's field experience, and from examination of comments on both the programmatic environmental impact statement and the proposed rulemaking. The reasons for most of the changes are set out in Issue Paper No. 1 in the Secretarial Issue Document. Updating and revision of land use plans will include periodic review of unsuitability assessments, too. Section 3461.3–1 is designed to reflect the fact that application of the criteria and their exceptions is a unified step, not the two-step process set out in the Instruction Memorandum that governed the early 1979 field test (43 FR 57664, December 8, 1978).

Paragraph 3461.3–1(a)(2) also assures public participation consistent with §§ 3420.1–5 and 3420.2. Section 3461.3–1(b) prescribes the treatment of issues of data unavailability or inadequacy, including the exception for data related to alluvial valley floors discussed above. Revisions of unsuitability assessments based on new data will be subject to the opportunity for the same public participation provided for in § 3461.3–1(a). Section 3461.3–1(a) also requires that the application of exceptions be detailed in a manner that makes it clear when exceptions have not been applied by the authorized officer in the exercise of his discretion.

Section 3461.3–2 has been revised to make it consistent with, and a cross-reference to § 3420.2–6. As proposed, it appeared to impose duplicative and potentially inconsistent consultation requirements. The new § 3461.3–2(b) describes what constitutes "consultation" when required in the application of unsuitability criteria or their exceptions. First, the section provides how consultation, and action taken contrary to advice received in consultation, must be documented to assure that the advice of consulted agencies is carefully considered and adhered to unless valid reasons for failing to do so are presented to the public. Second, time limits for consultation are provided that assure that no delaying tactics can be used by a consulted agency.

Section 3461.3–3 requires the inclusion in unsuitability assessments of a statement of findings of the effect of the assessment on coal supply consistent with that required of the Office of Surface Mining under section 522(d) of the Surface Mining Act. Several comments criticized the need for such a provision if it is not going to control, or at least be balanced in, the ultimate assessment. The Federal lands review set out in this subpart is designed to identify lands that should not be considered for leasing in the jugment of the Department of the Interior, without multiple use tradeoffs. Consideration of those findings, like the multiple use tradeoffs they resemble, will not weigh in the assessment whether the lands are unsuitable. The findings will serve two important purposes, however. They will supply systematic data to the Department of the Interior on the impacts of the criteria for consideration in any proposal to revise the criteria or the procedures of the Federal lands review. They will also expedite and simplify the Office of Surface Mining's action on petitions to designate Federal lands as unsuitable under section 522(c) of the Surface Mining Act.

Section 3461.4–1, formerly § 3461.1, is unchanged, and sets out the different steps in the leasing process when the unsuitability procedures might occur. Section 3461.4–2 treats application of the criteria to leased lands. Section 3461.4–2(b) has been revised to reflect the general merger of the criteria and the exceptions. This section also provides, in contrast to § 3461.3–1(a), that all exceptions must be applied on leased lands. It goes on to provide for the application of the regulatory exemptions from the criteria. Section 3461.4–2(c) describes how the Secretary of the Interior may approach the possibility of exchanging lease interests, consistent with subparts 3435 and 3436, on leased lands found unsuitable. This is the provision erroneously typeset in the proposal in subpart 3453.

Section 3461.5 has been almost entirely rewritten. The new subsections (b) through (d) implement the Secretary of the Interior's endorsement of the relationship between the Bureau of Land Management or Forest Service unsuitability *assessment* and the Office of Surface Mining's unsuitability *designation* under section 522(c) of the Surface Mining Act. This relationship is set out in the Secretarial Issue Document, Issue Paper No. 1, pp. 67–69. Since the surface management agency's unsuitability assessment does not *control* the Office of Surface Mining's petition process to designate lands unsuitable, § 3461.5(b) provides that the Bureau of Land Management or Forest Service may petition the Office of Surface Mining to have lands it has *assessed* as unsuitable formally designated so by the Office of Surface Mining. Similarly, § 3461.5(c) provides that the surface management agency shall file such a petition on leased lands, because unless the surface management agency does petition for formal *designation* of the lands as unsuitable, the Office of Surface Mining will be free to take action, consistent with its permanent program regulations, on a mining and reclamation plan for leased lands.

The Department's rules under the Surface Mining Act provide that petitions to designate Federal lands unsuitable will be filed with the Office of Surface Mining, then referred to the surface management agency for its report and recommendation on the petition. Section 3461.5(d) provides that the filing of the Bureau of Land Management's petition to designate, based on its completed *assessment*, with the Office of Surface Mining will constitute compliance with the latter's *designation* procedures to the maximum extent consistent with this division of responsibility within the Department of the Interior.

The provisions of subpart 3465 are, in essence, what remains of 43 CFR Subpart 3041 after all functions transferred to the Office of Surface Mining under the Surface Mining Act have been deleted (see 43 CFR 3400.0–4). Sections 3465.0–1, 3465.1–7 and 3465.1 have had minor changes made. Section 3465.2(c) has been amended to impose an affirmative obligation on the authorized officer to recommend necessary changes in or review of an approved permit. Section 3465.2(d) is clarified to emphasize the role of the authorized officer in recommending or imposing any necessary environmental protection conditions or stipulations. This is consistent with § 3400.0–4(a)(10) and proposed § 3400.0–4(c)(5) discussed above concerning the respective roles of the Bureau of Land Management and the Office of Surface Mining.

Section 3465.3–1 has been revised to make it clear that inspections can be unannounced, even though they cannot be at unreasonable times. Sections 3465.2 and 3465.3 have been revised to conform to the Office of Surface Mining's regulation language (30 CFR 843.11) with respect to enforcement upon discovery of conditions or activities that do not conform to a permit. Similarly, § 3465.4 has been revised to incorporate by reference the alternative postmining land use standards of the Office of Surface Mining, although the Bureau of Land Management must approve any alternative use for lands it administers. Proposed § 3465.7 was made part of § 3465.4 of the final rulemaking, since it too deals with postmining land use. The bonding provision is designed to establish the difference between the Bureau of Land Management's lease bond and the Office of Surface Mining's reclamation performance bond. The latter assures compliance with the approved permit.

Subpart 3471

Only minor changes were made in subpart 3471, which sets the requirements for land descriptions in leases and information as to what happens if the land in a lease area is conveyed under other laws or a lease is canceled. Protraction "survey" was changed to protraction "diagrams" wherever the term is used in the subpart. In § 3471.1–1(d), Coast and Geodetic Survey was changed to the National Oceanic and Atmospheric Administration, to accord with current agency functions. New § 3471.1–2(b) was added to clarify the provisions for lease descriptions for acquired lands in non-public land states.

One commenter complained that the provisions in § 3471.3–2 for the protection of bona fide purchasers of leases or lease interests were wholly unwarranted in the area of Federal coal leases. Whether or not the provisions are unwarranted, protection for bona fide purchasers was expressly provided by the Congress in section 27 of the Mineral Leasing Act (30 U.S.C. 184(h), (i) and (j)).

Subpart 3472—Lease Qualification Requirements

One comment on subpart 3472 requested that it be amended to specifically recognize the legality of joint bids. Joint bids are not prohibited so long as each co-bidder is qualified to hold Federal coal lease interests. The provisions of subpart 3472 are broad enough to encompass co-bidders without amendment and the suggestion was not adopted.

Two comments asked that the term "appreciable percentage" as used in § 3472.1–1(d) be quantified. "Appreciable percentage" means any amount which may be recognized or perceived; it cannot be quantified. The regulatory phrase cuts a compromise between the absolute statutory prohibition against an alien from a non-reciprocal country holding *any* interest in a Federal mineral lease, no matter how small his stock ownership (30 U.S.C. 181), and the limits of the Bureau of Land Management's obligation and resources to investigate the citizenship of stockholders of all corporate lessees no matter how small their percentage of the stock, especially when it is in an amount less than that required to be reported for purposes of acreage holdings attribution. The Bureau cannot ignore unlawful interests, even if they do not exceed ten percent of the stock of a corporate lessee, however, when the Bureau learns of them. Memorandum of July 11, 1962, from Associate Solicitor, Public Lands to Director, Bureau of Land Management, "Alien ownership in corporate lessees under the Mineral Leasing Act;" Memorandum of November 29, 1962, from Associate Solicitor, Public Lands to Assistant Secretary, Public Land Management, "Alien ownership in corporate lessees under the Mineral Leasing Act."

Section 3472.1–1 has been revised to delete all references to licenses to mine. Qualification requirements for a license to mine are now found in subpart 3440.

A comment recommended elimination of the acreage limitation provision of § 3472.1–2 as it appeared to be duplicative of the Department of Justice requirements. The acreage limitation is statutory and the Department of the Interior cannot issue a lease that would violate the acreage limitation. While acreage holding limitations clearly serve the purpose of avoiding monopoly control of Federal leases, the Congress added the separate provisions for Department of Justice review of the antitrust effects of leasing when it enacted section 15 of the Federal Coal Leasing Amendments Act of 1976. The Department of Justice's information on coal reserve holdings is otherwise unrelated to the Federal lease acreage holding limitations implemented in these sections.

One comment pointed out that there is no statutory basis to prevent a trustee from holding coal lease interests for trust beneficiaries without need of a court order, nor any basis for a prohibition against a natural guardian holding such an interest for a minor child. This suggestion has been adopted as part of the final rulemaking. A new § 3472.2–3 has been added requiring an attorney in fact to divulge any agreement that he may have with an applicant or bidder to receive any interest in the lease when it is issued.

A couple of comments objected to the requirement in § 3472.2–5(a)(4) that a public body, to qualify to bid for a lease, must submit a plan to produce energy within the next 10 years. The comments requested that the period be extended from 10 to 15 years. Because of the statutory diligence requirements, the period for commencement of production of coal cannot, with rare exceptions, be extended beyond the tenth anniversary date of a lease. The section has been revised, however, to change the beginning of the 10–year period from the date of application to the likely date of issuance of the prospective lease.

A request was made in a comment to change § 3472.2–5(c)(4) to allow public bodies to sell electricity to generating facilities not under the ownership of a public body. This section deals specifically with acquired lands set apart for military or naval purposes. Under the Federal Coal Leasing Amendments Act, leases for such lands may only be issued to a governmental entity which produces electrical energy for sale to the public in the State in which the lands are located. Therefore, the suggested change cannot be adopted.

Subpart 3473—Fees, Rentals, and Royalties

Section 3473.2–1 had been amended to include a requirement for a $10 filing fee for licenses to mine coal. Several comments took exception to the provisions of § 3473–2(a) setting the minimum lease royalty for surface-mined coal at 12½ percent. This is required by section 6 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 207) and cannot be changed.

Several comments objected to the proposed provisions of § 3473.3–2(d)(1), by which the Secretary of the Interior proposed not to grant any royalty reductions below 12½ percent for surface-mined coal. The final rulemaking reinstates the authority of the Secretary to reduce the royalty below the statutory minimum that must be fixed in each lease, in the exercise of his authority under section 39 of the Mineral Leasing Act (30 U.S.C. 209), when (a) a lessee applies for such a reduction, (b) it would be in the interest of conservation of the resources, and (c) the lease cannot be successfully

operated under its terms. This authority to reduce production royalty below that specified in the lease will be used sparingly, if at all, only upon a convincing showing of hardship, and only for a temporary period or periods on any lease.

The Secretarial decisions on Issue Paper No. 12 in the Secretarial Issue Document directed the Department of the Interior to study how the limitation on overriding royalties to 50 percent of the Federal royalty, set in § 3473.3–2(c), functions. The change in Federal royalty rates and the change in the market value of the coal itself since the regulation was adopted in 1954, may mean that the provision is now useless or ineffective. This study may lead to further rulemaking with respect to this provision, as may the study of the consideration paid for lease transfers.

In paragraphs 3473.3–2(b)(3) and 3473.3–2(d)(1), changes have been made to conform the regulations expressly to the Federal Coal Leasing Amendments Act and to the Department's December 1976 regulations related to advance royalties paid in lieu of continued operation for any lease year. References to "minimum royalties," which remain appropriate in Group 3500 covering phosphate, sodium and other mineral leases, are inappropriate for Group 3400 dealing with coal. Payments in lieu of continued operation on a Federal coal lease were and are "advance royalties." In addition, the proposed regulations did not specify that advance royalties would be credited against production royalties on all new or readjusted leases, nor did they reflect the prohibition in section 14 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 209) against reducing advance royalties under any circumstances.

The relationship between the Secretary's authority to suspend lease operations and lease obligations in § 3473.4, and the diligence regulations (§§ 3475.4, 3475.5), merits some discussion. In 1976 when the Secretary defined diligent development (subsection 3400.0–5(m)) to mean production in 10 years from lease issuance or by June 1, 1986, depending on when the lease was issued, he did not wholly abrogate the Secretary's authority to suspend a lease and lease obligations wholly under section 39 of the Mineral Leasing Act (30 U.S.C. 209), in the interest of conservation of the natural resources. For a lease on which the lessee applies for and receives such a suspension, the period of the lease does not run, lease rental and royalty obligations do not accrue, and likewise the time for achieving diligent development does not advance for the period of the suspension. In light of the Secretary's lease suspension authority, the regulatory definition means to the Department the "tenth *lease* year" from the date of lease issuance or June 1, 1986, depending on when the lease is issued.

The continued operation obligation (subsection 3400.0–4(j)) is also a "lease year," not a calendar year obligation. Except where provisions of the diligence regulations might expressly limit the Secretary's authority to suspend a lease for the purpose of mitigating the continued operation obligation, the authority in § 3473.4 may be exercised in a manner that results in the suspension of all lease operations, and thus of the continued operation obligation, for the period of the suspension.

Subpart 3474—Bonds

One comment pointed out that the lease bond provided for in subpart 3474 covers more than simply payments, and should not be terminated solely because a lease account was in good standing. In response to this comment, § 3474.1(c) of the proposed rulemaking has been deleted and a new § 3474.6, which reflects the actual period of liability, has been inserted in the final rulemaking.

Four comments expressed concern that the "lease bond" provided for in this rulemaking duplicated the "performance bond" set by the Office of Surface Mining that assures reclamation of the mined lands in accordance with the surface mining permit. The performance bond for the lessee's reclamation obligations is not covered in this subpart. That bonding is a function of the Office of Surface Mining covered in 30 CFR Part 742. The lease bond required by this subpart assures payment of all rentals and royalties, and covers potential damage to surface resources and values on a lease prior to issuance of a surface mining permit, and outside a permit area on a lease. The lease bond will not duplicate the reclamation performance bond; the final rulemaking contains an express provision in § 3474.3(b) for adjusting existing lease bonds to assure that the two bonds operate in a wholly complementary manner. In fact, new subsection 3474.3(b) provides that the lease bond amount may be reduced by elimination of coverage of reclamation obligations. This can probably be done on all non-producing leases; it will be infeasible only for any producing leases on which the lease bond continues to assure compliance with reclamation operations.

Several comments objected to the removal of the provision for statewide and nationwide lease bonds, on the grounds that individual lease bonds would be too burdensome to obtain and maintain. The Bureau of Land Management Task Force report number 15 (June 1979), which is available on request from the Bureau of Land Management's Office of Coal Management, or the Department's Office of Coal Leasing, Planning and Coordination, confirmed the pre-existing view of the inadequacies of the unrealistically low nationwide bonds, and the measures being taken by the Geological Survey and the Bureau of Land Management to assure that individual lease bonds are set in a manner that strikes the proper balance between maximizing the assurance that the lessee will satisfy all his lease payment and other covered obligations and minimizing the burden on the lessee of maintaining the lease bond. For instance, the Geological Survey will, wherever feasible, switch to monthly rather than quarterly royalty billing to cut to one-third the amount of royalty that must be covered by a bond, and the Department of the Interior is reserving the right to alter bond amounts during the life of the lease, so that the lessee does not need to be bonded for the amount of potential royalty payment obligations prior to initiating production.

The Department of the Interior will closely watch the nature and extent of any problems lessees or the Department may have in practice with individual lease bonds.

Subpart 3475—Lease Terms

Almost all the comments on subpart 3475 were critical of the Department of the Interior's regulations published in May and December of 1976, which defined diligent development and continued operation for existing Federal coal leases, and which made each Federal coal lease a logical mining unit for the purpose of calculating and administering those obligations. The authority to promulgate regulations defining diligence on Federal coal leases has, of course, been transferred to the Secretary of Energy by section 302(b) of the Department of Energy Organization Act, so that the Secretary of the Interior has no authority to alter the substantive diligence requirements.

These provisions are simply recodifications of the existing regulations of the Department of the Interior published in 1976, with only minor editorial changes designed to clarify any ambiguities in the original regulations, without altering their

substance. When and if the Department of Energy supersedes these obligations with different regulations, or adds other requirements, these regulations will be modified to cross-reference and otherwise conform to any such Department of Energy regulations. We will transmit the comments received on this subpart to the Department of Energy for its use, if it chooses, in exercising its authority to promulgate coal lease diligence regulations.

Although the rulemaking authority has been transferred to the Department of Energy, the Secretary of the Interior remains solely responsible for the administration of Federal coal leases. In the decisions on the Federal coal management program, the Department confirmed its intention to enforce the 1976 regulations to the fullest extent, to the ends that Federal coal may be timely developed during the next decade and contribute to easing the nation's energy supply problems, and to end the speculative holding of Federal coal leases.

One comment found it remarkable that the Federal Coal Leasing Amendments Act's definitions of diligence did not apply to earlier leases. The clear intent of the Congress, however, was that section 6 of the Federal Coal Leasing Amendments Act, amending 30 U.S.C. 207, was prospective (e.g., statement of Senator Metcalf, 121 Cong. Rec. S14566, July 31, 1975). A couple of commenters objected, as did others who commented on the 1976 regulations, to the fact that the regulations designated each lease existing prior to the enactment of the Federal Coal Leasing Amendments Act as a logical mining unit. The Department of the Interior regards this criticism, as it did in 1976, as a misplaced criticism of the application of the regulatory definitions of diligent development and continued operation to leases issued prior to the Federal Coal Leasing Amendments Act. All the Department of the Interior did in 1976 by using the term "logical mining unit" for an individual lease, was simplify its definitions of these diligence obligations. Instead of having to say, for instance, that "diligent development" means the extraction of "[2½ percent of the reserves of the lease, or if the lease has been combined with other Federal leases or non-Federal holdings into a logical mining unit,] 2½ percent of the logical mining unit reserves," the Department was able to delete the bracketed material in each definition. The suggestion to delete the second sentence of section 3474.5(a) is in fact an attempt to exempt all leases that have not been formally combined into a logical mining unit that includes other holdings from the 1976 diligence regulations. Only the Department of Energy could make such a substantive change in lessees' diligence obligations. Such a change, however, would wholly frustrate the purposes of the 1976 regulations as endorsed in the Secretarial decision on June 1; the Department of the Interior will not ask the Department of Energy to undo the 1976 regulations in that manner.

The reference in § 3475.5(a) to the not yet published Geological Survey provisions for the approval of multi-property logical mining units was deleted. A cross reference may be added when such rules are promulgated. The relationship of § 3475.5(c) to the relinquishment of leased coal deposits (§ 3452.1) was clarified in response to a comment.

General Information

The regulations are made effective upon publication for related reasons: (1) substantial portions of the new Group 3400 are existing minerals management regulations excised from the pre-existing Group 3500, and are only edited, recodified, and brought up to date; (2) substantial portions of the new subparts prescribe agency procedures, and do not affect the substantive rights or obligations of members of the public (see 43 CFR 14.5(d)); and (3) the public interest would not be served by any deferral either of implementation of the coal-related land use planning regulations in this Group, or of the regulations related to the management of existing leases, which is not required by law. Many of the policies and procedures in these regulations implement Secretarial decisions made on June 1 and 2, 1979, and were not treated in any prior regulations—these policies and procedures could have been, and in some cases were, implemented immediately following the Secretary's decision.

The material following the body of the new Group 3400 regulations on Coal Management contains the deletion of all provisions related to coal from Group 3500 of Title 43. The only provisions of Group 3500 related to coal that remain in effect are those that expressly reference provisions of Group 3400, such as the exchange leasing regulations in 43 CFR 3526.

The principal authors of this final rulemaking are Steven Quarles and Charles Rech of the Office of Coal Leasing, Planning and Coordination; Don Mitchell and Marcia Rohn, Office of Coal Management, Bureau of Land Management; Lawrence McBride and Robert Uram of the Office of the Solicitor, assisted by the staff of the Office of Legislation and Regulatory Management of the Bureau of Land Management. Editorial and clarification changes in the proposed regulations have been made as needed.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. However, after consultation with the Council on Wage and Price Stability, the Department of the Interior prepared economic analyses on maximum economic recovery and on the unsuitability criteria portions of the Federal coal management program. Those analyses are available upon request from the Office of Coal Leasing, Planning and Coordination.

The adoption of the Federal coal management program on June 1 and 2, 1979, was a major Federal action significantly affecting the quality of the human environment. A draft environmental impact statement was published on December 15, 1978, and a final environmental impact statement was published on April 29, 1979, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). This rulemaking is an integral part of the implementation of the Federal Coal Management Program studied in that environmental impact statement. Example regulations were published in an Appendix to the draft environmental impact statement, and proposed regulations in an Appendix to the final statement. The regulations were proposed so that analysis of the final environmental impact statement and the comments on the proposed rulemaking were both available for the Secretary's program decisions on June 1 and 2, 1979. The regulations in chief implement the Secretarial decisions reached in consideration of the analysis in the final environmental impact statement. The impacts of these regulations were thus studied in that environmental impact statement.

Under the authority of the Mineral Leasing Act of 1920, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act and the Multiple Mineral Development Act, Subchapter C, Chapter II, Title 43 of the code of

Federal Regulations is amended as set forth below.

July 16, 1979.

Cecil D. Andrus,

Secretary of the Interior.

1. The addition of a new Group 3400 and Part 3400 as follows:

Group 3400—Coal Management

PART 3400—COAL MANAGEMENT—GENERAL

Subpart 3400—Introduction—General

Sec.

3400.0–3 Authority.
3400.0–4 Responsibilities.
3400.0–5 Definitions.
3400.1 Multiple development.
3400.2 Lands subject to leasing.
3400.3 Limitations on authority to lease.
3400.3–1 Consent or conditions of surface management agency.
3400.3–2 Department of Defense lands.
3400.3–3 Department of Agriculture lands.
3400.3–4 Trust protection lands.
3400.4 Federal/state government cooperation.

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.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

Subpart 3400—Introduction—General

§ 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.

§ 3400.0–4 Responsibilities.

(a) The Bureau of Land Management has the responsibility to:

(1) Assess the unsuitability or the acceptability of Federal lands for leasing and development, or to enter into memoranda of understanding to authorize other Federal surface management agencies to conduct such assessments on lands they administer;

(2) Issue, modify and readjust leases, and serve as the lessor's office of record for and take appropriate action on transfers, relinquishments and similar lease transactions;

(3) Ensure that fair market value is received for rights to extract Federal coal before issuing a lease;

(4) Issue and administer all use authorizations for facilities related to coal development on Bureau of Land Management administered lands outside the permit area;

(5) Determine, in consultation with the Office of Surface Mining Reclamation and Enforcement, the appropriate post mining land use of Bureau of Land Management administered lands on which surface coal mining operations will be conducted;

(6) Include terms in each lease to protect nonmineral and noncoal mineral resources and to ensure reclamation of mined lands to the applicable standards;

(7) Recommend judicial action to cancel leases for noncompliance with lease terms;

(8) Consult with other surface management agencies and surface owners when they are involved in or affected by coal management actions that are the primary responsibility of the Bureau of Land Management;

(9) Adjudicate applications for, issue, and administer exploration licenses; and

(10) Review permit applications and advise the Office of Surface Mining Reclamation and Enforcement on measures necessary to protect other resources in the lands and to protect the interests of the holders of noncoal leases, licenses and permits.

(b) The Geological Survey has the responsibility on Federal lands to:

(1) Supervise production and coal resource recovery in the permit area;

(2) Make geologic, engineering, coal resource economic value, and maximum economic recovery determinations for coal related actions of the Department;

(3) Review and concur with mining and exploration plans, and amendments to plans on leases, to establish production and coal resource recovery requirements;

(4) Approve exploration plans and supervise exploration either under an exploration license, or on a lease outside a permit area;

(5) Deal with operators on the matters listed in paragraphs (b) (1) through (4) of this section; and

(6) Recommend tract ranking weights and factors for geologic, engineering and other coal resource criteria.

(c) The Office of Surface Mining Reclamation and Enforcement has the responsibility on Federal lands to:

(1) Approve mining and reclamation permit applications;

(2) Ensure that mining operations are consistent with environmental criteria and permit requirements;

(3) Assure compliance with permits in the conduct of mining and reclamation operations;

(4) Accept and release performance bonds;

(5) Approve applications for exploration within a permit area;

(6) Deal with operators during mining operations on the matters listed in paragraph (c) (1) through (5) of this section;

(7) Recommend tract ranking weights and factors for reclaimability;

(8) Negotiate, in consultation with the Bureau of Land Management and Geological Survey, and recommend for Secretarial approval, cooperative agreements with the states to establish the authority of state regulatory agencies over surface coal mining and reclamation operations on a lease; and

(9) Designate lands, in response to petitions, as unsuitable for all or certain methods of surface coal mining operations, reject petitions, and terminate designations of lands.

(d) The Fish and Wildlife Service has the responsibility on Federal lands to:

(1) Protect and conserve endangered and threatened species, migratory birds, and eagles;

(2) Recommend lands unsuitable for leasing due to fish, wildlife, and related ecological values;

(3) Recommend tract ranking factors and weights, for fish and wildlife;

(4) Recommend lease stipulations related to fish and wildlife values;

(5) Review and recommend postmining land uses of surface mined lands as they relate to the creation or maintenance of fish and wildlife values;

(6) Review exploration plans and mining plans to make recommendations about their potential impacts on fish and wildlife values; and

(7) Review projects authorized under Group 3400 of this title that will result in the impoundment, diversion or control of streams or other bodies of water, for the purposes of mitigating or avoiding

adverse impacts on fish and wildlife values.

§ 3400.0–5 Definitions.

As used in this part:

(a) "Alluvial valley floor" means unconsolidated, stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities. This definition does not encompass upland areas generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion; deposits laid down by unconcentrated runoff or slope wash, together with talus or other mass movement accumulations; and windblown deposits.

(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 logical mining unit other than that of the applicant for either an emergency lease under the provisions of section 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 nontransferable 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) "Coal resource economic value (CREV)" means the value of the coal resource in a proposed lease in its best operational and market application.

(i) "Commercial quantities" as used in paragraph (m) means:

(1) For any lease issued after August 4, 1976, an amount of production equal to one percent of the LMU reserves; or

(2) For any lease issued before August 4, 1976, an amount of production equal to one-fortieth of the LMU reserves.

(j) "Continued operation" means the production of coal equal to one percent of the LMU reserves for each of the first two years following the achievement of diligent development, and an average annual amount of one percent of the LMU reserves thereafter. The average annual amount shall be computed on a three year basis, and the three-year period for which the average shall be computed shall consist of the year in question and the two preceding years.

(k) "Contiguous" means having at least one point in common, including cornering tracts.

(l) "Department" means the United States Department of the Interior.

(m) "Diligent development" means (1) for any lease issued after August 4, 1976, the timely preparation for and initiation of coal production from the LMU of which the lease is a part so that coal is actually produced in commercial quantities by the end of the tenth year from the effective date of the lease; or

(2) For any lease issued before August 4, 1976, the timely preparation for and initiation of coal production from the LMU so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in 43 CFR 3475.4.

(n) "Director" means the Director of the Bureau of Land Management unless otherwise indicated.

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

(p) "Exploration" means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above and below the deposits, or the hydrologic conditions associated with the deposit.

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

(r) "Exploration plan" means, in relation to an exploration license, a plan prepared in sufficient detail to show 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.

(s) "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.

(t) "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 mineral estates or coal estates underlying private surface, but excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(u) "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.

(v) "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.

(w) "Intertract bidding competition" means a lease sale method where tracts containing more reserves in total than the Department intends to lease in that sale are offered for sale, and each bidder competes against other bidders on the same tract for which he bids and against bidders on the other tracts offered in the same sale.

(x) "Known Recoverable Coal Resource Area" or "KRCRA" means an area, including Federal lands which meet minimum standards for recoverable coal deposits in accordance with accepted mining practices, as determined by the Director, Geological Survey. The Federal lands in a KRCRA are classified for coal leasing.

(y) "Lease" means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which authorizes the exploration for and extraction of coal. In provisions of this

group that also refer to Federal leases for minerals other than coal, the term "Federal coal lease" may be used.

(z) "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 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).

(aa) "Licensee" means the holder of an exploration license.

(bb) "License to mine" means a license issued under the provisions of Part 3440 to mine coal for domestic use.

(cc) "Logical Mining Unit" or "LMU" means an area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard for the conservation of coal reserves and other resources. An LMU may consist of one or more leases and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the date of first approval of a mining plan for that LMU. No LMU approved after August 4, 1976, shall exceed 25,000 acres, including both Federal and non-Federal coal deposits.

(dd) "Logical Mining Unit reserves" mean the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU. The LMU reserves associated with a Federal lease are the LMU reserves estimated as of the effective date of the LMU, of which that lease is a part, except that the LMU reserves of this section may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries or whenever significant new information becomes available concerning the amount of such reserves.

(ee) "Maximum economic recovery" or "MER" means that all portions of the coal deposits within the lease tract shall be mined that have a private incremental cost of recovery (including reclamation, safety and opportunity costs) less than or equal to the market value of the coal.

(ff) "Mining method evaluation" means a written comparison of mining method alternatives used to determine maximum economic recovery.

(gg) "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).

(hh) "Mining plan" means a mining and reclamation operations plan that fully complies with the requirements of the Mineral Leasing Act of 1920 as amended, the Surface Mining Control and Reclamation Act of 1977, and all other applicable laws and regulations.

(ii) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or the District Mining Supervisor, or a subordinate acting under the Supervisor's direction.

(jj) "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.

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

(ll) "Participate" means to have, or take part or share with others, in an exploration license.

(mm) "Permit" means the document that authorizes surface coal mining and reclamation operations on Federal lands issued either by the Director of the Office of Surface Mining Reclamation and Enforcement or, where a cooperative agreement pursuant to section 523 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1273), has been executed by the state regulatory authority (30 CFR Part 741), after approval of a mining plan by the Secretary.

(nn) "Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the regulatory authority. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

(oo) "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.

(pp) "Qualified surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) 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 (1) and (2) of this subsection 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 (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 subsection.

(qq) "Reserves" means recoverable portion of coal deposits which are commercially producible under existing technology and economics. In these regulations, the terms "reserves" and "recoverable reserves" are used interchangeably.

(rr) "Secretary" means the Secretary of the Interior or his authorized representative.

(ss) "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.

(tt) "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.

(uu) "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".

(vv) "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)).

(ww) "Surface management agency" means the Federal agency with

jurisdiction over the surface of Federally owned lands containing coal deposits.

(xx) "Surface Mining Officer" means the field representative authorized to act for the Director of the Office of Surface Mining, Reclamation and Enforcement.

(yy) "Valid existing rights" as used in section 3461.1 of this title is defined in 30 CFR 761.5.

(zz) "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.

§ 3400.1 Multiple development.

The granting of an exploration license, a license to mine or a lease for the prospecting, 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.

§ 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).

§ 3400.3 Limitations on authority to lease.

§ 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.

§ 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.

§ 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.

§ 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(t). Regulations governing those deposits are found in 25 CFR Chapter I.

§ 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 § 3420.3–1(a). 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 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 chairman of the team. If the region is a multi-state region under the jurisdiction on more than one Bureau of Land Management State Office, the State Director shall designate a Bureau of Land Management representative for each state.

(b) Each regional coal team shall consider and suggest policy for regional leasing target setting, tract delineation, and site specific analysis in the coal production region; guide and review tract ranking; and conduct the selection and sale scheduling process in order to recommend regional lease sale alternatives to be analyzed in the regional lease sale environmental impact statement and to be recommended to the Secretary. Each team member may submit a lease sale schedule alternative which shall be treated equally in the draft and final regional lease sale environmental impact statement.

(c) Upon completion of the final regional lease sale environmental impact statement, the chairman shall submit the recommendations of the regional coal team to the Director. Any disagreement as to the recommendations among the team shall be documented and submitted by the chairman along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his decision, together with the recommendations of the team and any recommendations the Director may wish to make after review of the final statement.

(d) 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, concerning preference right lease applications, public body and small business setaside leasing, emergency leasing and exchanges.

(e) Participation in the proceedings of a regional coal team need not be limited to the designated representatives of the

Bureau of Land Management State Directors or the Governors. 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. At a minimum, participation shall be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct 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.

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

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Authority: 30 U.S.C. 181 et seq.

Subpart 3410—Exploration Licenses

§ 3410.0–1 Purpose.

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

§ 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.

§ 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)).

§ 3410.0–4 Responsibilities.

(a) The Bureau of Land Management exercises the Secretary's discretionary authority to determine whether exploration licenses are to be issued. The Bureau is also responsible for issuing and cancelling exploration licenses and terminating the period of liability of a licensee under any bond he may have posted as a condition of license issuance. The regulations in this subpart shall be administered by the Director of the Bureau of Land Management through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821) is also the Office of Record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area covered by the license, including responsibility for all geological, economic, and engineering determinations.

(c) The authorized officer; in consultation with the Gelogical Survey, and where appropriate, the surface management agency, the Fish and Wildlife Service, and the surface owner, if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources and for reclamation.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, shall provide technical review and approval of the exploration plan. The Geological Survey shall recommend bonding requirements to the Bureau of Land Management. Upon the completion of exploration operations, the Geological Survey shall recommend termination of the period of the licensee's liability under any bond posted.

§ 3410.1 Exploration licenses—Generally.

§ 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.

§ 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 for other than commercial purposes.

(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).

§ 3410.2 Prelicensing procedures.

§ 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 30 CFR 211.10(a).

(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) Any person qualified to hold a lease under the provisions in § 3472.1 of this title may apply for an exploration license.

(c) 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.

(d) 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. 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.

(e) 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.

§ 3410.2–2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer shall prepare an environmental assessment of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. The environmental assessment shall be prepared in coordination with the Geological Survey review and approval of the exploration plan.

(b) If the authorized officer determines that an environmental impact statement is required by Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), a statement shall be prepared prior to the decision whether to issue the exploration license.

§ 3410.2–3 Cultural resources.

If lands listed or eligible for inclusion in the National Register of Historic Places contain cultural resources which might be affected by any activity under an exploration license, no exploration license for such land shall be authorized until after compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f). Other cultural resource values shall also be protected pursuant to section 105 of the National Historic Preservation Act.

§ 3410.2–4 Threatened or endangered species.

If the proposed exploration would be likely to 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 for such lands shall be issued. In making this determination the authorized officer shall consult any other surface management agency, and, if the presence of any threatened or endangeed species or its habitat is suspected or known, with the Fish and Wildlife Service in accordance with 50 CFR Part 402.

§ 3410.2–5 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.

§ 3410.2–6 Substantial disturbance.

No exploration license shall be issued if exploration under it would result in substantial disturbance to the natural land surface and improvements. Substantial disturbance means any disturbance which would cause significant and lasting degradation to the land or injury to improvements, or any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quality or hydrologic conditions of the coal deposit.

§ 3410.3 Exploration licenses.

§ 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 exploration plan approved by Geological Survey 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 revoked 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 Mining Supervisor, with the concurrence of the authorized officer, and where appropriate the surface management agency, may approve the modification if geologic or other conditions warrant. If

modification of the exploration plan could result in substantial disturbance to the natural land surface or damage to improvements, the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the license to mitigate such disturbance or damage. Unless the licensee concurs in the adjusted terms and conditions of the license, the modification of the exploration plan shall not be approved.

(g) When unforeseen conditions that could result in sustantial 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, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the exploration license, or (2) the Mining Supervisor, after consultation with the authorized officer and where appropriate, the surface management agency, may direct adjustment in 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 may, under 43 CFR Part 4, appeal the decision modifying the license, or he 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 § 3410.3–1. A new exploration license may be issued simultaneously with the termination of the existing exploration license.

§ 3410.3–2 Limitations on exploration licenses.

(a) 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.

§ 3410.3–3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. 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.

§ 3410.3–4 Surface protection and reclamation.

(a) 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 land disturbed by exploration.

(b) The approved exploration plan shall not authorize substantial disturbance of the natural land surface or damage to improvements.

(c) The authorized officer may issue an exploration license for Federal lands underlying private surface. The bond amount, when the exploration license will embrace such lands, shall reflect any agreement between the license applicant and the surface owner with respect to compensation for operations on the surface of the lands in the exploration license.

§ 3410.3–5 Bonds.

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

(b) Prior to issuing an exploration license, the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency and the surface owner, shall insure that the amount of the bond or bonds to be furnished is sufficient to assure compliance with the terms and conditions of the explorations license, exploration plan and regulations. 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 such reclamation as may be needed 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. Where the surface of the land being explored is privately owned, the authorized officer shall not terminate the period of liability under the bond until each surface owner has notified the authorized officer, in writing, that the surface has been reclaimed in a satisfactory manner. 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. The period of liability under the bond shall be terminated after it is determined that the terms and conditions of the exploration license, the exploration plan, and the regulations have been met.

§ 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) In addition, the licensee shall furnish to the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor. All data shall be considered confidential and not made public until the areas involved have been leased or until the Mining Supervisor determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (30 CFR 211.6; 43 CFR 2.20.)

§ 3410.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only the surface area of the lands in the exploration license that is authorized in the exploration plan.

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

(c) The licensee shall comply with all applicable Federal, state and local laws and regulations, including the regulations in Group 3000 of this title, including Part 3460, and 30 CFR Part 211.

PART 3420—COMPETITIVE LEASING

Subpart 3420—Competitive Leasing

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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.; 42 U.S.C. 7101 et seq.; 43 U.S.C. 1701 et seq.; and 15 U.S.C. 631–644.

Subpart 3420—Competitive Leasing

§ 3420.0–1 Purpose.

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

§ 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 processes; to ensure that an adequate supply of Federal coal is developed efficiently in compliance with laws, planning processes, and other safeguards designed to protect society and the environment; 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.

§ 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.).

§ 3420.0–6 Policy.

All leases except those issued under the provisions of Part 3430 of this title shall be issued competitively. There shall be special opportunity lease sales for qualified public bodies and for small businesses. Before each sale, the Department shall evaluate and compare the method or methods of mining that will achieve the maximum economic recovery of the resource. The Department shall receive fair market value for all coal leased.

§ 3420.1 Procedures.

§ 3420.1–1 General.

Competitive leasing is a component of the Federal coal management program and consists of four principal elements: Comprehensive land use planning; establishment of regional leasing targets; tract delineation, ranking, selection, and scheduling; and lease sale. The application of unsuitability criteria pursuant to subpart 3461 of this title for mining is an integral part of land use planning. All competitive lease sales under this subpart shall be initiated by the Secretary; applications for a competitive lease will be accepted only when filed under the provisions of Subpart 3425 of this chapter.

§ 3420.1–2 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).

§ 3420.1–3 Known recoverable coal resource areas.

No area outside a designated Known Recoverable Coal Resource Area (KRCRA) shall be leased under this subpart. Each KRCRA shall be formally designated by publication in the **Federal Register.**

§ 3420.1–4 Special leasing opportunities.

(a) The Secretary shall, under the procedures established in this subpart, including § 3420.4 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 evidence of qualification (43 CFR 3472.2-5(a)) as part of its expression of leasing interest or upon submission of a 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 § 3420.4-2, 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.

§ 3420.1-5 General requirements for land use planning.

(a) The Secretary may not issue a lease for coal development under this part unless the lands containing the coal deposits have been included in a comprehensive land use plan or land use analysis and unless the sale is 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 analysis for lands it administers in accordance with either the standards in paragraph (c) of this section (but subject to the limitation in paragraph (e) of this section) or the provisions of § 3420.2 of this title.

(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 and land use analyses for lands it administers, in accordance with the standards in subsection (c) of this section, or in accordance with such general regulations as it may adopt for the preparation of comprehensive land use plans, except as provided in the following paragraph.

(3) The Secretary may lease in an 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, if:

(i) The lands have been included in a comprehensive land use plan prepared, authorized or recognized by the state in which the lands are located, which shall govern Federal coal leasing recommendations affecting surface management except for those decisions for which the Secretary is responsible under the Surface Mining Control and Reclamation Act of 1977, and those recommendations that are in conflict with Federal law; or

(ii) The Secretary has completed, in accordance with the standards in subsection (c) of this section or in accordance with group 1600 of this title, a land use analysis.

(c) In order to qualify as the basis for issuing a lease, the comprehensive land use plan or land use analysis shall have:

(i) considered a range of present and potential resource values and uses in accordance with the principles of multiple use and sustained yield;

(ii) used necessary professional disciplines in the analysis of resource development proposals;

(iii) identified critical environmental areas, if any;

(iv) reflected available, relevant data commensurate with anticipated conflicts in values and potential uses, and with likely levels and impacts of such uses;

(v) developed and analyzed alternative proposals for multiple resource development and use;

(vi) analyzed the significance of values that would be affected by proposed actions in terms of local, regional and national perspectives, consistent with agency directives; and

(vii) been formulated in consultation with appropriate state and local governments and agencies and with the opportunity for public participation, including a public hearing if requested by an adversely affected party.

(d) The Secretary, surface management agency or planning entity within a state shall supplement any plan or analysis to be used for coal activity planning to conform to subsection (c) of this section, if the plan:

(i) does not contain an unsuitability assessment as provided in § 3420.2-3(c) of this title, the Secretary shall conduct such an assessment;

(ii) does not contain the results of the surface owner consultation required under § 3420.2-3(e) of this title, the Secretary shall complete such consultation;

(iii) does not assess the amount of coal recoverable by surface and deep mining operations, the Secretary, surface management agency or planning entity within a state shall make such an assessment; or

(iv) was not prepared in conformity with subsection (c) of this section.

Any assessment or supplementation to the plan or analysis under this subsection shall provide the opportunity for public comment.

(e) After December 31, 1984, activity planning under § 3420.4 of this title may not be initiated with respect to any coal deposits administered by the Bureau of Land Management unless the area is included in:

(i) a comprehensive land use plan or land use analysis prepared in conformity with the regulations in group 1600 of this title; or

(ii) a comprehensive land use plan prepared under §§ 3420.1-5(b) (2) or (3)(i) of this title.

(f) 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 petition the appropriate Bureau of Land Management State Office for a land use analysis for coal related uses of the land as provided for in this group.

§ 3420.2 Land use plans prepared by the Bureau of Land Management.

§ 3420.2-1 Preparation of a land use plan.

The Bureau of Land Management shall prepare comprehensive land use plans (termed resource management plans) and land use analyses as provided in Group 1600 of this chapter.

§ 3420.2-2 Coal resource information.

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

§ 3420.2–3 Areas acceptable for further consideration for leasing.

(a) 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 in subsections (b) through (e) below, and the additional planning considerations in subsections (f) and (g) below. Each screening procedure in subsections (b) through (e) below shall be applied only to those lands still identified as acceptable for further consideration for leasing after application of the screening procedure in each preceding subsection.

(b)(1) Only those areas subject to evaluation for leasing (§ 3420.1–2) that have high or moderate development potential coal deposits shall be considered acceptable for further consideration for leasing.

(2) This determination shall be based generally on the Geological Survey's Coal Resource Occurrence-Coal Development Potential (CRO/CDP) maps. If CRO/CDP maps are not available, the Geological Survey shall use other available data sources to estimate coal development potential for the surface management agency. If other data sources are used, the same criteria for designating coal deposits as high or moderate development potential shall be used. Coal companies, state governments and the general public are encouraged to submit information to the Geological Survey for use in the CRO/CDP mapping program at any time.

(3) Coal companies, state governments, and members of the public may submit non-confidential coal geology and economic data during the earlier inventory phase of planning to the Bureau of Land Management State Office conducting the planning. Where such information is determined to indicate significant development potential for an area not shown to be of moderate or high development potential in the CRO/CDP maps, the area shall be considered moderate development potential and shall not be excluded from further consideration and application of the remaining screens in the land use planning process.

(c) The authorized officer shall, using the unsuitability criteria and procedures set out in Subpart 3461, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of coal 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.

(d) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resources values of a locally important or unique nature not included in the unsuitability criteria discussed in subsection (c) of this section.

(e)(1) 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 (1) and (2) of § 3400.0–5(pp) of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(2) 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 for leasing 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 mining techniques if there are no acceptable alternative areas available to meet the regional leasing target.

(3) 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:

(i) the number of surface owners who have expressed their preference against mining by other than underground methods is reduced below a significant number because (A) surface owners who expressed their preference against such mining subsequently have given written consent for such mining, or (B) the ownership of the surface estate of surface owners who expressed such a preference is transferred to surface owners who are not surface owners or to surface owners who subsequently provided consent to such mining; and

(ii) the land use plan is amended accordingly.

(f) The land use plan may provide for impact thresholds as described in Group 1600 of this title to manage coal development. Where a threshold level would be reached, the Bureau of Land Management shall halt, suspend or condition further consideration of the areas otherwise considered acceptable for further consideration for leasing.

(g) Where the areas acceptable for further consideration for leasing within a planning unit, in the judgment of the local land manager clearly contain more reserves than are likely to be needed for leasing until the evaluation of the plan conducted under § 1601.5–9 of this title, or analysis, the plan or analysis may specify broad areas greater than 60,000 acres for earliest consideration for leasing, if any is to be done.

§ 3420.2–4 Hearing requirements.

(a) The Bureau of Land Management 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 Group 1600 of this chapter may fulfill this requirement.

(b) The authorized officer conducting the hearing shall: (1) publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) provide an opportunity for testimony by anyone who so desires; and

(3) record the proceedings of the hearing.

§ 3420.2–5 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, the Bureau of Land Management shall consult with the other agency to obtain its recommendations as to the acceptability for further consideration for leasing of the land the other agency administers.

§ 3420.2–6 Consultation with States and Indian tribes.

Before adopting a comprehensive land use plan or land use analysis that makes any formal 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 to obtain its recommendations concerning the unsuitability assessment.

§ 3420.2-7 Identification of lands as acceptable for further consideration.

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 § 3420.4 of this title.

§ 3420.3 Regional production goals and leasing targets.

§ 3420.3-1 General.

(a)(1) The coal production regions to which this section applies shall be set out by notice in the **Federal Register**. They may be changed, or their boundaries altered, by publication in the **Federal Register**.

(2) If any region so established, wholly east of the 100th meridian, contains insufficient Federal coal deposits to justify treating coal leasing in the entire region through activity planning under § 3420.4 of this title, such a notice may prescribe areas within such a region in which activity planning is unlikely to occur in the foreseeable future and in which applications to lease shall be accepted under § 3425.1-5 of this title.

(b) The Secretary in consultation with the Secretary of the Department of Energy, affected state Governors, Indian tribes and other concerned parties shall biennially adopt regional coal production goals provided by the Department of Energy, adjusted as provided in §§ 3420.3-2 (e) and (f) of this title. The Secretary shall also establish regional leasing targets for the purposes of setting Departmental priorities, aiding the states in planning for potential future impacts of coal development, and supplying the guidance for establishing the amount of coal to be offered through proposed lease sale schedules.

§ 3420.3-2 Evaluation of coal needs.

This section sets out the process the Department shall follow in establishing regional coal needs and appropriate coal management actions.

(a) Proposed regional production goals stating the desired levels of production of various types of coal shall be established by the Department of Energy consistent with the procedures as agreed to by the Secretaries of Energy and of the Interior on production goals for energy resources on Federal lands.

(b) The Secretary shall, within 60 days of receipt of the proposed production goals, review and comment thereon to the Secretary of Energy. The Secretary shall inform the Secretary of Energy 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; (2) the capabilities of Federal lands and Federal coal resources to meet the proposed goals; and (3) the national need for coal resources balanced against the environmental consequences of developing these resources.

(c) The Secretary of Energy shall issue final production goals not more than 30 days after receipt of the Secretary's comments. In establishing or revising regional lease sale schedules, the Secretary shall be guided by these final production goals of the Department of Energy.

(d) The Department of Energy's final production goals and related production statistics of the Department of the Interior shall be provided to the regional coal teams. Each team shall consider the regional situation and recommend adjustments to the relevant regional production goal based on such factors as (1) public comment received in writing or in hearing(s) held by the team in the region, (2) state government, Bureau of Land Management State Office, Indian tribe and regional development policies, (3) administrative capacity to satisfy the indicated level of leasing based on the Department of Energy's final production goals, and (4) other information available to the regional coal teams which they believe should receive consideration by the Secretary in his review of the Department of Energy's final regional production goals. Notice of hearings held under this subsection shall be published in the **Federal Register** and in at least one newspaper of general circulation in each state in the region.

(e)(1) The Secretary shall consider the findings and recommendations of the regional coal teams and other relevant information and review the Department of Energy's final regional production goals to determine whether any adjustments thereto are necessary.

(2) The Secretary shall also establish preliminary regional leasing targets, based on: the Department of Energy's final regional production goals; recommendations of the regional coal teams about feasible regional leasing targets; and other relevant information. In establishing the preliminary regional leasing targets, the Secretary shall evaluate, at a minimum: the expected and potential production for existing coal leases; noncompetitive coal leases, non-Federal coal holdings and expected non-Federal (including Indian tribal) leasing; and the level of competition within the coal region.

Consideration shall also be given to the relative economic, social and environmental differences among the coal production regions, the comparative environmental and other benefits of developing Federal rather than non-Federal coal, and other factors as the Secretary deems appropriate. Preliminary regional leasing targets shall:

(i) reflect the difference between desired levels of production in the region and projected supplies, including supplies of specific types of coal;

(ii) be set out on the basis of coal reserve tonnages;

(iii) be for 4 years; and

(iv) take into consideration the coal that would come into production as a result of Federal leasing.

(f)(1) The Secretary shall either adopt the Department of Energy's final regional production goals or make the necessary adjustments thereto and then adopt the goals, as adjusted. Upon adoption of the Department of Energy's final regional production goals with or without adjustments, such goals, together with the reasons for adjustments, if any, shall be transmitted to the Secretary of Energy.

(2) The preliminary regional leasing targets and regional production goals as adopted with or without adjustment by the Secretary shall be published simultaneously in the **Federal Register** and in a newspaper of general circulation in each state in the region.

(g) In the process of adopting the Department of Energy's final regional production goals and establishing preliminary regional leasing targets, the Secretary may call a national conference of the regional coal teams to review their recommendations.

(h) In addition to participating in the regional hearings specified in subsection (d) of this section, the coal and utility industries, agricultural and community organizations, environmental groups Indian tribes and other concerned parties shall be afforded the opportunity to submit their views on the regional production goals, as adopted by the Secretary, and on the preliminary regional leasing targets by responding to the notice in the **Federal Register** as prescribed in subsection (f) of this section, and, if requests are received,

from the public through additional hearing(s).

(i) The Secretary shall consult with the State Governors seeking their views concerning the Department of Energy's final regional production goals, those goals as adopted by him, and the preliminary leasing targets. The Secretary shall particularly seek the Governors' views regarding the relationship between the preliminary regional leasing targets and potential social and economic effects on the State and region.

(j) Based on the consultation with State Governors, consideration of the Department of Energy's final regional production goals, as adopted, and the comments received on these goals and the preliminary regional leasing targets, and the comments received, the Secretary shall adopt final regional leasing targets for the guidance of regional coal teams as set out in § 3420.3–3 of this title.

(k) Two years after the adoption each of new regional lease sale schedule, the Secretary shall review the final regional leasing target which applies to that schedule throught the process set out in paragraphs (b) through (j) of this section and, if necessary, revise the final regional leasing target for the final 2 years of the sale schedule. If there is a new regional leasing target requiring a major change in the tracts proposed for sale, a 2 year supplement to the regional lease sale environmental impact statement shall be prepared.

(l) The regional leasing targets established for the regional lease sales in 1981 or 1982 may be established by the Secretary based on the analysis presented in the Final Environmental Statement, Federal Coal Management Program, and related analyses without regard to the provisions of paragraphs (a) through (j) of this section.

§ 3420.3–3 Use of final regional leasing targets.

(a) The final regional leasing targets shall guide the regional coal teams in the preliminary delineation, ranking, selection and scheduling of tracts for lease sale in the coal production regions.

(b) The final regional leasing targets do not represent final leasing decisions and may, with the approval of the Secretary, be revised by the regional coal teams, prior to the adoption of a lease sale schedule by the Secretary, as a result of consideration of national needs and social, economic, and environmental factors that are taken into account during the tract ranking, selection, and scheduling process. Circumstances justifying a revision of a final regional leasing target may include the following:

(1) Expressed industry interests in coal development in the region not reflected in the final regional leasing target;

(2) Expressed interests and reasons there for from a community or group of communities for or against coal development in the adjacent and surrounding areas;

(3) Expressed interests for special opportunity sales;

(4) Adjustments indicated by the success or failure of the scheduled lease sales in meeting the final regional leasing targets;

(5) An expressed desire on the part of the state or local government to shift or disperse development patterns in the region or sub-region by additional leasing, reductions in leasing, or shifts in locations of lease sales; and

(6) Results from the analyses contained in the regional lease sale environmental statement.

(c) Whether or not the regional coal team proposes a revision of the relevant final regional leasing target, one alternative analyzed in the regional lease sale environmental impact statement shall be the final leasing target established pursuant to § 3420.3–2(j) of this title.

(d) Where a regional coal team elects to propose a revision of the relevant final regional leasing target during the selection of tracts proposed for lease sale and the design of the recommended regional lease sale schedule, the team shall clearly set out the proposed revision and the reasons therefor in the regional sale environmental impact statement and request public comment on the proposed revision in the public participation process for the regional lease sale environmental impact statement. Such a proposed revision shall not become effective unless and until the Secretary approves the recommended alternative leasing target and schedule.

§ 3420.3–4 Environmental analysis.

An environmental assessment in the form of an updating of the most current environmental impact statement on the Federal coal management program shall be conducted by the Secretary if he:

(a) Determines that the regional production goals and regional leasing targets established in accordance with §§ 3420.3–2(e) and 3420.3–2(l) vary significantly from those analyzed in the most current version of the coal programmatic statement; or

(b) Determines that the tracts available for selection in the next round of the tract ranking, selection, and scheduling process (Section 3420.4–4) in any given region(s) may generate significantly different levels or types of environmental impacts than were anticipated in the most current coal programmatic environmental statement.

§ 3420.4 Activity planning—The leasing process.

§ 3420.4–1 Area identification process.

(a) This section describes the process for identifying, ranking, 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 § 3420.1–5 of this title.

(b) Split estate land otherwise acceptable for further consideration for leasing shell, 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.

§ 3420.4–2 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 § 3420.1–5 of this title. The call may be made in any one, several, or all of the above mentioned areas when the Secretary determines, using the regional production goals and regional leasing targets established under § 3420.3–2 of this title, that additional Federal coal leasing may be needed to meet local, state, or national needs in the foreseeable future.

(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. This notice of request shall specify the area or areas involved, information required, the time period within which expressions may be submitted, where to write for further information and where to submit expressions.

(c) The expressions of leasing interest process provided for in this subpart is not exclusive. Any individual, business entity, governmental entity, or public body may participate in the general public participation opportunities and procedures that are part of the land use planning process which precedes the call for expressions of leasing interest.

(d) Entities qualifying for leasing public body opportunities as defined in § 3420.1–4(b)(1)of this title shall make their intentions known through submission of expressions of leasing interest when called for by the Secretary.

(e) Any expressions of leasing interest may include supportive nonproprietary data. Such data may include, but are not limited to, location and quantities and types of coal (including coking coal) desired, time frames for development, proposed uses of coal, technical coal data, commitments between private surface and coal owners and adjacent land owners or lessees, and basic development proposals. Expressions which identify quantity and quality of coal and timing of need without specifying a location shall be given as serious consideration in activity planning as those that specify a location. Data which are considered proprietary shall not be submitted as part of an expression of leasing interest.

(f) All information submitted under this subpart shall be available for public inspection and copying upon request.

§ 3420.4–3 Preliminary tract delineation.

(a) Preliminary tracts shall be delineated for analysis during ranking, selection, and scheduling. Although only unleased Federal coal deposits can be included in a lease sale, for the purpose of analysis, the preliminary tracts may include non-Federal and leased Federal as well as unleased Federal coal reserves and may include existing mining operations.

(b) In addition to expressions of leasing interest, factors to be considered in delineating preliminary tracts may include, but are not limited to:

(1) Technical coal data, including reserve tonnage, rank, sulfur content, seam thickness, and ratio of overburden to recoverable coal;

(2) Conservation considerations, including preliminary indications of maximum economic recovery, mixed land ownership patterns, and the potential formation of logical mining units; and

(3) Surface ownership, including surface owners' preferences expressed in consultation during land use planning, and the existence of written consents from qualified surface owners and their terms.

(c) The potential tracts shall be delineated in accordance with § 3471.1–2 of this title and by seam(s) or coal bed(s). More than one potential tract may be delineated for a specific coal bed or potential mining unit.

(d) 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 § 3420.1–4 of this title.

(e) 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 § 3420.1–4 of this title.

(f) Other tracts to be used in a lease or fee exchange (43 CFR Subparts 3435, 3436, and 3437) may be delineated.

(g) A tract profile shall be formulated for each preliminary 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.

(h) The regional coal team shall determine the location, priority, and timing of both preliminary tract delineation and site-specific environmental inventory and analysis.

§ 3420.4–4 Regional tract ranking, selection, and scheduling.

(a) If there is a final regional leasing target adopted under § 3420.3–2(j) of this title for any given region, tracts shall be ranked and selected, and a proposed lease sale schedule shall be prepared pursuant to this section. Tracts may also be ranked for other coal management purposes, such as exchanges under subparts 3425, 3436 and 3437 of this title.

(b)(1) The ranking classes shall be those of high, medium and low desirability. Three major categories of considerations shall be used in tract ranking: coal economics; impacts on the natural environment; and socio-economic impacts. The subfactors to be considered under each category shall be those determined by the regional coal team as appropriate for that region, and shall be published in the regional lease sale environmental impact statement required by § 3420.4–5 of this title. The regional coal team shall defer the ranking of any given preliminary tract for which they determine there is generally insufficient data.

(2) The regional coal teams may modify tract boundaries being ranked in order to reflect analyses conducted in developing the tract profile.

(3) The regional coal team shall solicit the recommendations of Federal and state agencies having appropriate expertise. These Federal agencies shall include but are not limited to the Department of Energy, the Fish and Wildlife Service, the Geological Survey, and the Office of Surface Mining Reclamation and Enforcement, and any Federal agency that administers the surface of any lands in a preliminary tract.

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

(c)(1) Upon completion of tract ranking, the regional coal team shall select tracts for inclusion in alternative proposed lease sale schedules or for other management purposes to be forwarded to the Secretary for final selection.

(2) The regional coal team may adjust the tract ranking in the selection process, and select tracts for scheduling from the tract ranking, using considerations including: (i) the compatibility of coal quality, coal type and market needs; (ii) cumulative environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future by-pass situations; and (vi) special leasing opportunity requirements.

(3) The regional coal team shall identify all those combinations of tracts which they feel may be equally desirable to meet the applicable final regional leasing target. In addition to tract combinations designed to meet the leasing target, the team may recommend tract combinations representing alternative leasing targets based on its analysis of environmental impacts or revised regional coal demand, but the reasons for all such recommendations shall be thoroughly documented.

(4) All alternative tract selections shall be subject to any restrictions placed on leasing actions by the comprehensive land use plans or land use analyses that include the tracts.

(d) A notice of intent to rank tracts shall be published in the Federal Register and selected newspapers of general distribution within the region before the ranking process begins. The notice shall contain a description of the tracts to be ranked and procedures under which any interested parties may become involved in the process.

(e) The results of the process, including the tract rankings, the tracts selected, the proposed schedule, and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement prepared on the proposed lease sale schedule and its alternatives (Section 3420.4–5). Detailed information on each of the tracts ranked will be available for

inspection in the Bureau of Land Management State Offices that have jurisdiction over lands within the coal production region (43 CFR Subpart 1821). Those parties interested in commenting on the results of the tract ranking, selection and scheduling process shall have the opportunity to do so in the environmental impact statement process, prior to any final decision by the Secretary to adopt a regional sale schedule including any of the selected tracts.

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any revisions in the ranking, selection and scheduling analysis they feel are necessary. The team shall then forward their final recommendations of alternatives for a regional leasing schedule to the Director, consistent with § 3400.4(c) of this title.

(g) The tract ranking, selection, and scheduling process shall normally be repeated every 4 years with an update performed every 2 years, if needed, in accordance with the Secretary's determination, based on the regional production goals and regional leasing targets, that the regional lease sale schedule should be revised. 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 planning updates, new preliminary tract delineations, and increases or decreases in regional leasing targets.

§ 3420.4–5 Environmental analysis.

(a) In conjuction with the tract ranking, selection and scheduling process, a regional environmental impact statement on the alternative lease sale schedules shall be prepared 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 development activities.

(b) The regional lease sale environmental impact statement prepared for the original regional lease sale schedule shall be updated if the Secretary makes any significant alterations to that schedule not considered in the original environmental impact statement.

(c) The procedures for completion and contents of such statement are further treated in §§ 3400.4(c) and 3420.4–4 of this title.

§ 3420.4–6 Public meetings on proposed tracts.

After the draft regional lease sale environmental impact statement has been completed on alternative lease sale schedules, public meetings shall be held in the region to announce and discuss the results of the ranking, selection, and scheduling process; the alternative lease sale schedules; and the potential impacts, including proposed mitigation measures.

§ 3420.5 Final consultations.

§ 3420.5–1 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 §§ 3420.5–2 through 3420.5–5 of this title.

§ 3420.5–2 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.

§ 3420.5–3 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 a specified period of time to comment, not less than 30 days nor more than 60 days, 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.

§ 3420.5–4 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 a specified period, not less than 30 days nor more than 60 days, in which to comment prior to adopting a lease sale schedule.

§ 3420.5–5 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 not less than 30 days nor more than 60 days in which the Attorney General may advise the Secretary prior to adopting a lease sale schedule.

§ 3420.6 Qualified surface owner consent considerations.

§ 3420.6–1 Receipt and consideration of written consent.

(a) Prior to making a final decision on a regional lease sale schedule, the Secretary shall consider what written consents have been received for those lease tracts under consideration for inclusion in the regional lease sale schedule, in accordance with the split estate leasing provisions of this title.

(b) All other ranking, selection and scheduling factors being nearly equal, those tracts for which acceptable written consents have been received shall be chosen for inclusion in the regional coal lease sale schedule over those for which no acceptable written consents have yet been received.

§ 3420.6–2 Announcement of tracts under consideration.

With the release of the final regional lease sale environmental impact statement, the Secretary shall publish an announcement in the Federal Register containing:

(a) a legal description of all tracts under consideration for inclusion in the regional lease sale schedule, and

(b) the deadline for anyone to submit the written consent of any qualified surface owner for any tract under

consideration by the Secretary for selection for inclusion in the regional lease sale schedule.

§ 3420.7 Adoption of final regional lease sale schedule.

§ 3420.7-1 Announcement.

Following completion of the requirements of §§ 3420.5 and 3420.6 of this title the Secretary shall announce 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.

§ 3420.7-2 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 § 3420.5 of this title, if such revision would be in the public interest. Notice of any such revision shall be published in the same manner as the announcement of the original regional lease sale schedule.

(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 § 3420.4-4 of this title.

Subpart 3422—Lease Sales

§ 3422.1 Economic evaluation.

§ 3422.1-1 Mineral evaluation and comments on fair market value and maximum economic recovery.

After announcement of the regional lease sale schedule, and in any case not less than 30 days prior to the publication of a notice of sale, the authorized officer shall:

(a) Solicit public comment on the fair market value of the tract or tracts proposed to be offered. Such solicitation shall ask for comments on these items which affect the appraisal such as the terms and conditions of similar market transactions, the quality and extent of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams should be discounted, depreciation and other accounting factors, the value of the surface estate (if private surface), the mining method or methods which would achieve maximum economic recovery of the coal and any other items which might affect the appraisal of the tract or tracts. Such comments will be solicited for a period of not less than 30 days. The authorized officer shall forward a copy of all comments to the Geological Survey.

(b) Request from the Geological Survey and evaluation including a coal resource economic value (CREV) and a maximum economic recovery (MER) determination. Prior to issuance of the sale notice, the Geological Survey shall forward this evaluation to the authorized officer. This evaluation shall include the coal resource economic value, mining method evaluation, estimated recoverable reserves by bed, preliminary MER indication, coal quality assessment, royalty and lease bond recommendations; an estimate of reclamation fees that mining the tract would generate, and an evaluation of the public comments on fair market value and maximum economic recovery.

(c) Proprietary data marked as confidential may be submitted to the authorized officer in response to the solicitation of public comments. Data so marked shall be treated in accordance with the Freedom of Information Act.

§ 3422.1-2 Estimated fair market value determination.

(a) When the mineral evaluation and accompanying information is received from the Geological Survey, the authorized officer shall estimate the fair market value of the tract proposed for lease sale. Minimum bonus bids shall be not less than $25 per acre. When the estimated fair market value has been determined, the authorized officer shall inform the Geological Survey of the determination.

(b) The fair market value determinations for public body lease sales shall be derived in the same manner as for other lease sales.

§ 3422.2 Notice of sale.

(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. Such notice shall also be posted in the Bureau of Land Management State Office and shall be mailed to any surface owner of lands noticed for sale. 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 (whether by sealed or oral bid), rental, and the description of the tract(s) being offered and the minimum acceptable bids to be considered;

(2) Contain the pre-lease indication of maximum economic recovery by bed of coal to be mined as a guide to bidders, even though this determination would not be a lease term, and would be subject to revision in the formal MER determinations to be made in mine plan approval; 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 statement that, if sealed bids are submitted, they may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening the bids;

(3) Contain a statement that, if the sale is by oral bid, sealed bids may also be submitted;

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

(5) 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;

(6) Specify that, if any bid is rejected, any deposit shall be returned;

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

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

(9) Require the bidder to pay one fifth of the cash bonus bid;

(10) If appropriate, contain a copy of any written consent given by a qualified surface owner and its terms, including payments which the high bidder, if not the holder of the consent, will have to make;

(11) 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; and

(12) Contain a copy of the proposed lease, including all terms and conditions, and including all stipulations concerning compliance with the requirements of the Surface Mining Control and Reclamation Act to be made a part of the lease.

(d) The successful bidder, if any, shall reimburse the Government for the cost of publishing the notice of sale as a condition of lease issuance.

§ 3422.3 Sale procedures.

§ 3422.3-1 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) If the announced procedure is to receive sealed bids followed by oral bids, the authorized officer conducting the sale shall open and read the sealed bids, after which the oral bidding shall begin at the level of the highest sealed bid. Only those submitting sealed bids may offer oral bids. After the oral bidding has ceased, the highest bid shall be announced. (3) 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 fair market value of the tract; and (3) whether the bidder is qualified to hold the lease. The recommendations of the panel shall be sent to the authorized officer who shall make the final decision to accept a bid or reject all bids. 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. A high oral bidder shall tender by certified check, cashier's check, bank draft, money order, certificate of bidding rights, personal check or cash at the close of bidding any additional amount necessary to bring the amount tendered with his sealed bid up to one fifth of his oral bid.

§ 3422.3-2 Other bidding systems.

(a) The use of intertract bidding competition is authorized when, and if, the Bureau of Land Management and the Geological Survey in consultation with the Department of Energy determine it is needed in the public interest. The authorization to use intertract bidding competition does not preclude the use of any other form of competitive bidding procedures.

(b) In intertract bidding competition, the winning bidders, if any, are selected by determining first the tract with the single highest bid per ton of reserves among all tracts, then the tract with the second highest bid, and so forth. The bids may be weighted to compensate for differences in the physical quality of the coal in such tracts. If leases are awarded they shall be awarded for tracts proceeding in this sequence until the total reserve tonnage sought to be leased in that sale has been reached. Tracts receiving lower bids per ton shall not be leased as a result of a bid submitted in that sale.

§ 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.

§ 3422.3-4 Consultation with the Attorney General.

(a) Definitions.

As used in this section, the term:

(1) "Moist mineral matter free", "dry mineral free", "low volatile", "high volatile", "bituminous", "subbituminous" and "lignite" are defined as in ANSI/ASTM D 388–77.

(2) "Committed reserves" means estimated volume of reserves necessary to fulfill current contractual commitments and reserves set aside for own use.

(3) "Uncommitted reserves" means all reserves not committed.

(4) "Affiliate" of the successful bidder means any person, association or corporation which controls, is controlled by, or is under common control with the successful bidder.

(5) "Control" includes having or acquiring effective power or influence to determine the policies, business practices or decisionmaking processes of another person, association or corporation, whether such power or influence is actual or legal and whether exercised directly through ownership of stock or assets, representation on the board of directors or election of one or more officers. Control shall be presumed to exist whenever any person, association or corporation owns 10 percent or more of the outstanding voting securities of another person, association or corporation.

(6) "Joint venture" means a corporation, partnership or association through which the successful bidder (or one or more affiliates of the successful bidder) and one or more non-affiliate corporations, partnerships or associations own or lease coal reserves.

(7) "Free swelling index" is defined as in ANSI/ASTM D720–67.

(b) 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 the information set out in this section 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 the terms of the proposed lease and shall transmit the following statement on coal holdings. The successful bidder's submission shall include the following best available information required by the Attorney General for each coal tract or deposit controlled by the bidder:

(1) With regard to coal subject to the lease to be issued:

(i) Tract description (including state and county);

(ii) Total estimated in-place reserves;

(iii) Total estimated recoverable coal reserves;

(iv) Moist mineral matter free BTU content;

(v) Sulfur content of raw coal;

(vi) Anticipated sulfur content of coal as shipped;

(vii) Dry, mineral matter free volatile matter (for bituminous coal only); and

(viii) Free Swelling Index (for bituminous coal only).

(2) With regard to all coal holdings owned, leased or controlled by the successful bidder or any affiliate(s) of the successful bidder, or owned, leased or controlled by any joint venture of the successful bidder or any affiliate of the successful bidder at the time of the submission to the authorized officer:

(i) A separate listing of tons of total, and uncommitted in place and committed in place coal reserves by State (except that eastern and western Kentucky shall be reported separately) in the following categories:

(A) Low and medium volatile bituminous coal with a Free Swelling Index greater than 4 and with not more than 1 percent sulfur;

(B) Low and medium volatile bituminous coal with a Free Swelling Index greater than 4 and with more than 1 percent sulfur;

(C) High volatile bituminous coal with a Free Swelling Index greater than 4 and with no more than 1 percent sulfur;

(D) High volatile bituminous coal with a Free Swelling Index greater than 4 and with more than 1 percent sulfur;

(E) All other bituminous coal;

(F) Subbituminous coal;

(G) Lignite;

(H) Total coal; and

(I) Federal coal.

(ii) In the case of a joint venture, reserves shall be prorated according to shares of the joint venture for inclusion in the categories in paragraph (b)(2)(i).

(3) A list of all affiliates and joint ventures of the successful bidder owning, leasing or controlling coal reserves. In the case of a joint venture, the share of the joint venture shall be indicated.

(4) A statement indicating whether the successful bidder, any affiliate or any joint venture including the successful bidder or an affiliate is an railroad, a nuclear fuel fabricator or converter, or an electric utility. If so, each such company shall be identified.

(5) Upon notification by the authorized officer, and additional information the Attorney General may find necessary in order to complete his review of any proposed lease issuance.

(c) Where a successful bidder has previously submitted a statement of coal holdings in the above form, 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.

(d) 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 authorized officer 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.

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

(f) If the Attorney General notifies the authorized officer 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 (b) 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.

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

(h) 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. Such information should be submitted to the authorized officer in a sealed envelope and transmitted in that form to the Attorney General.

§ 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(f)(2) of this title have been completed, the authorized officer shall send four copies of the lease form to the successful bidder. These forms shall be completed, signed, and returned within 30 days of receipt. In addition, the successful bidder shall, within the 30-day period: pay the balance of the bonus bid, if required; pay the first year's rental; pay the cost of publishing the notice of sale; and file a lease bond as required by Subpart 3474 of this chapter. 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 found in § 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 payment 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 four 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 the requirements of subsection (a) of this section, the deposit on the successful bid shall be forfeited to the United States.

Subpart 3425—Leasing on Application

§ 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 §§ 3420.4 through 3420.7 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.

§ 3425.0–6 Policy.

Leasing proposals developed by this application process differ from those that originate through the activity planning process only with respect to the method of tract delineation and the manner in which the planning and environmental analysis will be completed.

§ 3425.1 Application for lease.

§ 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).

§ 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 § 3471 of this title. The application must be accompanied by the filing fee (43 CFR 3473.2).

§ 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.

§ 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 application involves an existing mining operation that has been producing coal for at least two years before the date of application, and either: (i) the Federal coal is needed within three years to maintain an existing mining operation at the current average annual level of production, or new contracted level of production to supply coal for contracts signed prior to the effective date of these regulations, as substantiated by a complete copy of the supply or delivery contract, or both; or (ii) if the coal deposits are not leased they shall be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for shall be used within three years, as substantiated by the proposed production levels stated in a mining sequence plan submitted as part of the application for lease; and

(2) That the need for the coal deposits shall have resulted from circumstances that were beyond the control of the applicant or that he could not have reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.4 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 qualifies in subsection (a)(1) of this section.

(c) No lease shall be issued under this section if:

(1) the applicant holds an existing lease issued under this section;

(2) such an existing lease and the application are related to the same mining operation; and

(3) the number of years of reserves (at the calculated rate of production) leased in accordance with subsection (b) of this section is greater than the number of years that have passed since the issuance of such an existing lease.

§ 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:

(a) Outside a coal production region identified under § 3420.3-1(a)(1) of this title; or

(b) Within any part of an eastern coal production region designated to be subject to this subpart under § 3420.3-1(a)(2) of this title.

§ 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).

§ 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, (which may be available from state or Federal sources) 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 (Section 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). (See 43 CFR Subpart 3427).

§ 3425.1-8 Rejection of applications.

(a) An application for a lease shall be rejected in total or in part when the authorized officer determines that: (1) the application is not consistent with the

applicable regulations; (2) issuance of the lease would violate the integrity of the normal leasing process; 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 subsection (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.

§ 3425.2 Land use plans.

No lease shall be issued under this subpart unless the lands have been included in a comprehensive land use plan or a land use analysis, as required in § 3420.1–5 of this title. The decision to hold a lease sale shall be consistent with the appropriate comprehensive land use plan or land use analysis.

§ 3425.3 Environmental analysis.

(a) Before a lease sale may be held under this subpart the authorized officer shall prepare an environmental assessment of the proposed lease area.

(1) The environmental assessment shall include:

(i) An evaluation of direct and indirect potential impacts including cumulative impacts of coal leasing and development upon the physical and socio-economic environment of the proposed lease area and adjacent areas that may be affected;

(ii) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(iii) An evaluation of all reasonable alternatives to leasing the area or to any known plans of operation for the proposed area.

(2) The environmental assessment shall contain recommendations and special stipulations regarding:

(i) Lands that should be excluded from the proposed areas to avoid unacceptable environmental or special impacts, including those lands to be excluded as identified through the application of the unsuitability criteria in subpart 3461 of this title.

(ii) Any specific measures required to avoid or mitigate adverse impacts to, or to reclaim areas that may be acceptable for further consideration for leasing including measures to assure appropriate post-mining land use and measures to prevent irreparable damage or destruction of unique environmental values that are identified either through the application of the unsuitability criteria in subpart 3461 of this title or in the comprehensive land use plan or land use analysis.

(3) If, based upon the environmental assessment prepared under paragraph (2) of this section the authorized officer determines that an environmental impact statement is required under the National Environmental Policy Act of 1969, either a statement shall be prepared in accordance with the provisions of 40 CFR 1500, or the authorized officer may determine that, because of critical environmental considerations or limitations, including reclamation potential, the application shall be rejected pursuant to § 3425.1–8 of this title.

(4) If, based upon the environmental assessment prepared under (2), the authorized officer determines that an environmental impact statement is not required under the National Environmental Policy Act of 1969, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6.

(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)).

§ 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 or hearings shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease, including impacts on the environment, agriculture and other economic activities and community or regional services. The hearing on an environmental impact statement prepared under § 3425.3 of this title, if one is prepared, may satisfy the hearing requirement.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in § 3420.5–2 through 3420.5–5 of this title.

(3) No notice of sale shall be published in response to an application under this subpart for any lands subject to § 3427.1 of this title unless and until the authorized officer has received written consent from the qualified surface owner(s).

(b)(1) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under subpart 3425 of this title.

(2) In addition to the requirements set forth in § 3422.2 of this title, in any sale authorized under § 3425.1–4 of this title, the successful bidder shall meet the criteria in § 3425.1–4 of this title.

§ 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 3470).

Subpart 3427—Split Estate Leasing

§ 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).

§ 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).

§ 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.)

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0–5) where the surface is owned by a qualified surface owner, coal deposits that will be mined by methods other than underground mining techniques shall not be included in a lease sale notice without written consent from the qualified surface owner (43 CFR 3400.0–5) allowing the lessee/operator to enter and commence surface mining operations.

§ 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) at least 30 working days prior to the publication of the lease sale notice of the lands to which it applies. It shall be the responsibility of parties intending to file consents to be aware of pending coal lease sale notice dates. Generally, these dates shall be as

published in the final regional sale schedule (43 CFR 3420.7).

(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) At each stage in the tract delineation, ranking and scheduling in that region, split estate lands that would be mined by other than underground mining techniques, covered by written consents that are filed with the appropriate State Office before the final decision on the pending regional lease sale schedule, shall be given priority over such split estate lands where there is no written consent from the qualified surface owner.

(e) Within 15 working days after the filing of a written consent, evidence thereof, or a statement of refusal to consent, the State Office 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 (2) and (3):

(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, at a minimum, it allows that after the lease sale for the tract to which the consent applies (i) the payment for the consent may be made by the successful bidder or (ii) the successful bidder may reimburse the party that first obtained the consent for the purchase price of the consent;

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

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

(f) 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, transferable, 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.

(g) The conditions of (e) and (f) shall be met prior to publication of the sale notice.

(h) The State Director 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.

(i) The purchase price of any applicable written consent from a qualified surface owner 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 on the tract sale.

(j) Any statement of refusal to consent shall be treated as controlling until the land use plan that includes the area covered by the refusal to consent is revised or the surface estate is sold. When revision of the land use plan is initiated, the qualified surface owner shall be notified that his prior statement of refusal has expired, and shall be given the opportunity to submit another statement.

§ 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.

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 4, 1977, shall be considered valid for the purposes of this subpart.

PART 3430—NONCOMPETITIVE LEASES

Subpart 3430—Preference Right Leases

Sec.

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Authority.—30 U.S.C. 181 et seq.; 30 U.S.C. 521–531; 30 U.S.C. 351–358; 30 U.S.C. 1201 et

seq.; 42 U.S.C. 7101 et seq. and 43 U.S.C. 1701 et seq.

Subpart 3430—Preference Right Leases

§ 3430.0–1 Purpose.

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

§ 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)).

(c) These regulations also implement Solicitor's Opinion M–36893, 84 I.D. 442 (1977).

§ 3430.0–7 Scope.

Because 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, the regulations in this subpart apply only to lease applications which have already been filed. No additional prospecting permits that confer a preference right to a coal lease shall be issued. Therefore, these regulations address only the procedures for processing pending preference right lease applications. 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.

§ 3430.1 Preference right leases.

§ 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.

§ 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.

§ 3430.2 Application for lease.

§ 3430.2–1 Initial showing.

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

(a) The measured and indicated quantity and quality of the reserves discovered within the boundaries of the prospecting permit.

(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;

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

(4) A brief description, including maps or aerial photographs as appropriate of: (i) existing land uses on and adjacent to the applied for land; (ii) known geologic, visual, cultural, or archaeological features on the applied-for land; and (iii) known wildlife habitat, and that of threatened or endangered plant and animal species, that may be affected by the planned exploration and mining operations;

(5) A brief description of measures planned to prevent or control fire and to mitigate or prevent soil erosion, ground and surface water pollution, damage to wildlife or its habitat, air and noise pollution, hazards to public health and safety, and impacts to the social and infrastructure systems of local communities; and

(6) A brief description of any plans that the applicant wishes to have considered by the authorized officer which show how the applicant expects to reclaim disturbed sites and otherwise meet applicable laws and regulations.

§ 3430.2–2 Additional information to comply with statutory and regulatory requirements.

In addition to the information required by § 3430.2–1 of this title, the applicant shall have submitted within the time specified by the authorized officer:

(a) certified abstracts indicating the presence of any mining claims lying within or partly within the preference right lease application area that were located prior to the issuance of the prospecting permit, or a certified abstractor's certificate indicating the absence of any mining claims located prior to that time; or

(b) any other information needed to show compliance with statutory or regulatory requirements.

§ 3430.2–3 Additional time.

(a) If the applicant has timely submitted some, but not all, of the information required by §§ 3430.2–1 and 3420.2–2 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.

§ 3430.3 Planning and environment.

§ 3430.3-1 Land use planning.

(a) As a matter of policy, the Department shall complete the processing of all preference right lease applications by December 1, 1984.

(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. If the authorized officer has multiple applications which he or she finds involve substantial hardship, the authorized officer, in determining which applications to process first, shall consider the applicant's need for coal, the length of time the application has been pending, the regional need for coal and the promptness with which the applicant has responded to requests for information from the Department.

§ 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 assessment or environmental impact statement shall include:

(1) An evaluation of direct and indirect potential impacts including cumulative impacts of leasing and development upon the physical and socioeconomic environment of the proposed lease area and adjacent areas that may be affected;

(2) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(3) An evaluation of all reasonable alternatives to leasing the area, including the possibilities of exchange or purchase, or to any known plans of operation for the proposed area as set forth in any preliminary data and information.

(c) The environmental assessment or environmental impact statement record shall be prepared containing recommendations on lease terms and special stipulations regarding:

(1) Lands that should be leased with conditions or protective stipulations or other action to prevent unacceptable environmental or social impacts, including stipulations or other actions to protect those lands identified through the application of the unsuitability criteria of subpart 3461 of this title;

(2) Any specific measures required to avoid or to mitigate adverse impacts, or to reclaim areas that may be acceptable for leasing and development, including measures to assure appropriate postmining land use.

(d) If, based upon an environmental assessment prepared under (c), the authorized officer determines that an environmental impact statement is required under the National Environmental Policy Act of 1969, such a statement shall be prepared according to 40 CFR Group 1500.

(e) If, based upon an environmental assessment prepared under (c), the authorized officer determines that an environmental impact statement is not required, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6.

§ 3430.4 Final showing.

§ 3430.4-1 Request for final showing.

(a) Upon completion of the environmental assessment or impact statement on the application, the authorized officer shall promptly request a final showing by the applicant.

(b) The authorized officer shall transmit to the applicant, with the 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) Within 90 days of receiving the proposed lease form, the applicant shall submit the following information:

(1) Estimated revenues;

(2) 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) A comparison of the estimated costs and revenues of any mining venture constituting the logical mining unit of which the lease would become a part.

(d) The information submitted by the applicant shall be sufficiently detailed to determine whether the applicant's showing (1) has a reasonable factual basis, (2) supports the applicant's assertion that the proposed lease contains commercial quantities of coal, and (3) reflects a consideration of all factors required by this section.

(e) 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.

§ 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.

§ 3430.5 Determination of entitlement to lease.

§ 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 §§ 3430.2–3 or 3430.4–2 of this title; or

(3) The applicant otherwise failed to meet mandatory statutory or regulatory requirements, including those relating to acreage limitations, qualifications to hold leases, timely payment of rent or procedural requirements.

(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.

§ 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.

§ 3430.5–3 Determination to lease or seek an exchange.

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

(1) coal has been discovered in commercial quantities on the lands applied for; and

(2) 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

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

(b) The authorized officer may recommend that the Secretary initiate exchange proceedings under § 3430.5–4 of this title, if he determines that:

(1) The land under application has been shown to contain commercial quantities of coal;

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

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

§ 3430.5–4 Lease exchange.

The Secretary may initiate, upon his own initiative, the recommendation of the authorized officer, or the request of the applicant, lease exchange procedures under 43 CFR Subpart 3435 for the issuance of coal lease bidding rights, modifications to existing coal leases, a mineral lease under subpart 3526 of this title, or in the case of an application including lands in an alluvial valley floor, the issuance of a coal lease under provisions of subpart 3436 of this title, if he finds that the three conditions in § 3430.5–3(b) of this title are met.

§ 3430.6 Lease issuance.

§ 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 including: royalty and rental rates and the diligent development, continued operation and logical mining unit requirements in § 3475.4 of this title.

§ 3430.6–2 Bonding.

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

§ 3430.6–3 Lease area.

A preference right lease shall include all lands in the application used in deterimining the entitlement to a lease.

§ 3430.6–4 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 subpart 3400.0–5 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.

§ 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.

Subpart 3431—Negotiated Sales—Rights-of-Way

§ 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.).

§ 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)).

§ 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.

§ 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 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.

Subpart 3432—Lease Modifications

§ 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).

§ 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 to the United States.

§ 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.

§ 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) A lease modification shall not be made until the authorized officer has complied with the procedures and standards set out in § 3425.3 of this title.

Subpart 3435—Lease Exchange

§ 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 to currently unleased lands to preserve public resource or social values, and to carry out Congressional directives authorizing coal lease exchanges.

§ 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); and

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

§ 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 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 mineral lease other than coal, by mutual agreement between the applicant and the Secretary under subpart 3526 of this title; or

(d) Federal coal lease modifications; or

(e) Any combination of the above.

These interests may be granted to the extent of the Secretary's authority in exchange for the relinquishment of all or part of the existing lease or preference right lease application, any part of which has been or may be assessed to be unacceptable for development because of non-coal public values identified or discovered after the lease or prospecting permit was issued.

§ 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 3536 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 listed in section 1 of the Act of October 30, 1978.

(c) The Secretary shall evaluate each qualified exchange request and determine whether an exchange is appropriate.

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

§ 3435.3 Exchange procedures.

§ 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 include a statement of why the Secretary believes an exchange may be in the public interest.

(c) The notice may contain a description of the lands on which the Secretary would grant a lease or lease interest in exchange. If the exchange is for coal development rights, the lands shall be selected from those found

acceptable for further consideration for leasing under § 3420.2 of this title. The description of the interests under consideration for relinquishment may include all or part of an existing lease or preference right lease application.

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

§ 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 within 60 days of the receipt of the exchange notice. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or grant of coal lease modifications.

(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.

§ 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:

(1) Negotiate the selection of appropriate exchange lands containing a logical mining unit of coal in those cases where the Secretary is authorized to issue a coal exchange lease, or a minable unit of leasable minerals other than coal;

(2) Negotiate appropriate coal lease modifications;

(3) Negotiate to establish the value of coal lease bidding rights; or

(4) Negotiate any combination of the above.

(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 § 3420.2–3 of this title.

§ 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.

§ 3435.3–5 Notice and public hearing.

(a) After the lessee or lease applicant and the Secretary agree on the land to be leased, the coal lease modifications to be granted or the bidding rights to be issued, notice of the proposed exchange shall be published in the **Federal Register** and in at least one 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 one public hearing will 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. The hearing(s), if any, shall be held to obtain public comments on the merits of the proposed exchange.

(b) If the tract to be leased in exchange has been identified at the time of the environmental assessment or environmental impact statement of the exchange, any notice of the availability of a draft statement or public hearing on the assessment or statement may be used to comply with subsection (a) of this section.

§ 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 at least 45 days after this notification 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.

§ 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.

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

(a) If, after any public hearing(s), the Secretary by written decision concludes that the issuance of a coal or other mineral lease or coal lease modification or coal lease bidding rights in exchange for the relinquishment of the existing lease, preference right lease application or portion thereof is in the public interest, lease, stipulations for operations on the exchange lease or modified lease shall be established.

(b) The exchange documents shall contain:

(1) A statement that the lessee thereby quitclaims all right or interest in the lease or preference right lease application exchanged; and

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

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

(d) The exchange lease or lease modification shall be subject to all relevant provisions of group 3400 or 3500 of this chapter, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211, as appropriate.

Subpart 3436—Lease Exchange—Alluvial Valley Floors

§ 3436.0–1 Purpose.

The purpose of this subpart is to establish procedures for coal lease exchanges where coal development operations 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 these alluvial valley floors.

§ 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)).

§ 3436.1 Qualified exchange proponents.

(a) The coal lease exchange program for designated alluvial valley floors shall be limited to any person who holds a Federal coal lease or preference right lease application on lands west of the 100th Meridian, west longitude, and who has made substantial financial and legal commitments prior to January 4, 1977, in connection with the lease or preference right lease application, and who otherwise meets the criteria in the proviso in section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977. Any such person may propose an exchange under this subpart.

(b) The lease offered in exchange by the Secretary shall be for lands determined to be acceptable for leasing under criteria of the Geological Survey and acceptable for further consideration for leasing under the criteria in § 3420.2-3 of this title, including the unsuitability criteria in subpart 3461 of this title.

§ 3436.2 Exchange procedures.

(a) The Secretary on his own motion, or upon recommendation of the authorized officer, or upon request by any qualified lessee, may initiate a lease exchange. No special form of application is required.

(b) The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

§ 3436.3 Recovery of costs.

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.

§ 3436.4 Lease issuance.

Any coal lease issued as a result of an exchange under this subpart shall be subject to all relevant provisions of group 3400 of this title, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211.

Subpart 3437—Coal Land Exchange—Alluvial Valley Floors

§ 3437.0-1 Purpose

The purpose of this subpart is to establish criteria for the exchange of privately owned (fee) coal for unleased federally-owned coal where coal mining operations would interrupt, discontinue, or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity and quality of water in surface or underground systems that supply these alluvial valley floors.

§ 3437.0-3 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 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)); and

(2) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

§ 3437.1 Qualification criteria.

§ 3437.1-1 Qualified exchange proponents.

The fee coal exchange program for designated alluvial valley floors shall initially be limited to all qualified persons who (a) own coal west of the 100th Meridian, west longitude, and:

(b)(1) Who have made or whose lesses have made substantial financial and legal commitments prior to January 1, 1977, in connection with the coal holding; or

(2) Who have had or whose lessees have had the regulatory authority not issue a surface mining permit because the holding is in an alluvial valley floor, and who otherwise meet the criteria of the provision in section 510(b)(5). Any such person may provision in section 510(b)(5). Any such person may propose an exchange under this subpart.

§ 3437.1-2 Unqualified proponents.

The Secretary shall not consider an exchange proposed by the owner of coal west of the 100th meridian west longitude otherwise qualified under § 3437.1-1 of this title, where:

(a) The existing land use is undeveloped rangeland which is not significant to farming;

(b) The area of the affected alluvial valley floor is small and provides or may provide only negligible support for production from one or more farms; or

(c) The prohibition against mining the coal in the alluvial valley floor does not substantially decrease the value of, or prevent the successful mining of, other coal that would have been developed in conjunction with the coal in the alluvial valley floor.

§ 3437.2 Exchange procedures.

(a) The Secretary shall evaluate each qualified exchange request and determine whether the exchange proponent is qualified and whether a request is appropriate and is in the public interest.

(b) Qualified requests shall be processed in accordance with the regulations of subpart 2200 of this title subject to the provisions of this subpart.

(c) The coal deposits offered in exchange by the Secretary shall be assessed as acceptable for leasing under the criteria of the Geological Survey, and acceptable for further consideration for leasing under the criteria in § 3420.2-3 of this title, including the unsuitability criteria in subpart 3461 of this title.

(d) Exchange under this subpart, whether proposed by the Secretary or by a qualified exchange proponent, may include the coal estate, the entire mineral estate, or the entire mineral and surface estates in the lands conveyed to the United States or in the lands conveyed by the United States.

PART 3440—LICENSES TO MINE

Subpart 3440—Licenses to Mine

Sec.

3440.0-3 Authority.
3440.1 Terms.
3440.1-1 Forms.
3440.1-2 Qualifications.
3440.1-3 Limitations on coal use.
3440.1-4 Area and duration of license.
3440.1-5 Payments and reports.
3440.1-6 Compliance with Surface Mining Control and Reclamation Act.

Authority: 30 U.S.C. 181 et seq.

Subpart 3440—Licenses to Mine

§ 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).

§ 3440-1. Terms.

§ 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 section 3473 of this title, except when the application is filed by a relief agency.

§ 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.

§ 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.

§ 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. All Federal and state laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

§ 3440.1-5 Payments and reports.

(a) No rental or royalty shall be required.

(b) Each holder of a license to mine shall provide an annual report to the appropriate Bureau of Land Management State Office describing all operation conducted under such license.

§ 3440.1-6 Compliance with Surface Mining Control and Reclamation Act.

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

PART 3450—MANAGEMENT OF EXISTING LEASES

Subpart 3451—Continuation of Leases—Readjustment of Terms

Sec.

3451.1 Readjustment of lease terms.
3451.2 Notification of readjusted lease terms.

Subpart 3452—Relinquishment, Cancellation, and Termination

3452.1 Relinquishment.
3452.1-1 General.
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3453.3 Approval.
3453.3-1 Conditions for approval.
3453.3-2 Disapproval of transfers.
3453.3-3 Effective date.
3453.3-4 Extensions.

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.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

Subpart 3451—Continuation of Leases—Readjustment of Terms

§ 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.

(3) Each lease shall be readjusted to provide that it is subject to the unsuitability criteria set out in subpart 3461 of this title.

(b) The authorized officer shall notify the lessee whether or not any readjustment of terms and conditions is to be made. If feasible, the authorized officer shall so notify the lessee of any lease which becomes subject to readjustment prior to June 1, 1980, before the expiration of the current 20-year period.

(c) 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 be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976, and to conform expressly to the provisions for diligent development and continued operation in § 3475.6 of this title.

(d)(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 shall prescribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of 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.

(e) 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.

§ 3451.2 Notification of readjusted lease terms.

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

(b) The notification of readjusted lease terms shall also notify the lessee that if he does not file either an objection to the proposed readjustment or a relinquishment of the lease within 60 days after receipt of notice of the proposed readjusted terms from the authorized officer, the terms of such readjustment shall be considered agreed upon.

(c) The notification of readjusted lease terms shall specify the procedures to be followed if the lessee objects to the proposed readjusted lease terms.

(d) The readjusted lease terms shall become effective either 60 days after the lessee is notified of them, or 30 days after the authorized officer transmits the required information to the Attorney General, whichever is later.

(e) In any case of an appeal from the notice of readjusted lease terms, the authorized officer may, consistent with 43 CFR 4.21(a), provide that the decision is effective pending the outcome of the appeal.

Subpart 3452—Relinquishment, Cancellation and Termination

§ 3452.1 Relinquishment.

§ 3452.1–1 General.

Upon a satisfactory showing that the public interest shall not be impaired, 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 deposits therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished (see 43 CFR 3475.5(c)).

§ 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).

§ 3452.1–3 Acceptance.

The relinquishment shall be effective on the date that the authorized officer determines that all 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.

§ 3452.2 Cancellation.

§ 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 the general regulations in force on the date of the lease or in force on the effective date of any readjustment of the terms and conditions of the lease, or with regulations issued after lease issuance and readjustment but made applicable under the terms of the lease; or (3) defaults in the performance of any of the terms, covenants, and stipulations of the lease.

(b) A waiver of any particular default, breach or cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other default, breach or cause of forfeiture, or for the same cause occurring at any other time.

(c) 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.

§ 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.

§ 3452.3 Termination.

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

(b) Should a lease be 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.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

§ 3453.1 Qualifications.

§ 3453.1–1 Who may transfer or receive a transfer.

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

(b) A minor is not qualified to hold a lease in his own name and a transfer to a minor in his own name shall not be approved. However, a transfer in behalf of a minor, including a minor heir or devisee of a lessee, to a legal guardian or trustee may be approved.

§ 3453.1–2 Number of copies required.

A single signed copy of the qualifications required under subpart 3472 of this title is sufficient.

§ 3453.1–3 Sole party in interest.

The transferee or transferees shall comply with § 3472.2–1 of this title.

§ 3453.1–4 Attorney-in-fact.

The attorney-in-fact shall comply with § 3472.2–3 of this title.

§ 3453.1–5 Heirs and devisees.

An appropriate showing as required under § 3472.2–4 of this title shall be furnished before the heirs or devisees of

a deceased holder of a lease, operating agreement, or royalty interest in a lease can be recognized by the Secretary as the new holders of a lease, agreement, or interest.

§ 3453.2 Requirements.

§ 3453.2–1 Application.

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

§ 3453.2–2 Forms and statements.

(a) Transfers of any record title interest shall be filed in triplicate.

(b) No specific form need be used for requests for approval of transfers. The application 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.

(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 transfers, or a statement incorporating a prior submission of the specified information by reference to the date and lease 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 subsections (e) and (f) of this section may be labeled as proprietary data and shall be so treated, consistent with the Freedom of Information Act.

§ 3453.2–3 Filing location and fee.

An application for approval of a transfer shall be filed in the Bureau of Land Management State Office having jurisdiction over the leased lands proposed for transfer (43 CFR Subpart 1821). Each application shall be accompanied by a nonrefundable filing fee (43 CFR 3473.2).

§ 3453.2–4 Bonds.

(a) If a bond is required, it shall be furnished before a lease transfer may be approved. The consent of the surety to the substitution of the transferee as principal or a new bond with the transferee as principal shall be submitted if the original lease required the maintenance of a bond. If the transfer is for part of the leased land only, it shall be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee shall be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the leased lands transferred.

(b) The person transferring a lease, including a sublessee, and the surety for the lease shall continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the transfer. If the transfer is not approved, their 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, and the transferee's surety shall be responsible for all lease obligations notwithstanding any terms in the transfer to the contrary.

§ 3453.2–5 Description of lands.

The description of the lands involved in the instrument of transfer shall match the description of lands in the lease. The transfer of only a part of the lands shall be permitted only where it is demonstrated that each remaining lease area is a logical mining unit or part of a logical mining unit.

§ 3453.2–6 Effect of partial assignment.

The approval of a transfer of only a part of the lands in a lease shall create a new lease, bearing a new serial number, but containing the same terms and conditions as the original lease. A lease so created shall be deemed a logical mining unit.

§ 3453.3 Approval.

§ 3453.3–1 Conditions for approval.

No transfer shall be approved if:

(a) the transferee is not qualified to hold a lease or an interest in a lease under subpart 3472 of this title, or under §§ 3420.1–4(b)(1)(iv) and 3420.1–4(b)(2)(ii) of this title;

(b) the lease bond is insufficient;

(c) the filing fee has not been submitted;

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

(e) the transfer would create an overriding royalty interest in violation of § 3473.3 of this title;

(f) the lease account is not in good standing; or

(g) the information required under § 3453.2–2 (e) or (f) of this title has not been submitted.

§ 3453.3–2 Disapproval of transfers.

(a) The authorized officer shall deny an application for 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)(1) The authorized officer shall not approve a transfer until 30 days after the Attorney General receives the notice and statement of the transferee's coal holdings, or until the Attorney General notifies the authorized officer that the transfer would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. If the Attorney General notifies the authorized officer that the statement of coal holdings is not complete or accurate, the 30 day period shall stop running on the date of such notification and shall not resume running until the Attorney General receives the supplemental information.

(2) The authorized officer shall not approve the transfer if, during the 30 day period, the Attorney General notifies the authorized officer that the lease transfer would create or maintain a situation inconsistent with the antitrust laws, except after complying with subsection (b)(3) of this section.

(3) If the Attorney General notifies the authorized officer that a transfer should not be approved, the authorized officer shall disapprove the transfer unless, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

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

(ii) approval of the transfer is in the public interest; and

(iii) there are no reasonable alternatives to approval of the transfer consistent with the Federal Coal Leasing Amendments Act of 1976, the antitrust laws and the public interest.

§ 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, the first day of the month of the approval.

§ 3453.3-4 Extensions.

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.

PART 3460—ENVIRONMENT

Subpart 3461—Federal Lands Review—Unsuitability for Mining

Sec.

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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.

Subpart 3461—Federal Lands Review—Unsuitability for Mining

§ 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)).

§ 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.

§ 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(vv) of this title. The manner in which the criteria are phrased does not diminish the scope of the general underground mining exception (43 CFR 3461.2), or the obligation of the authorized officer to describe in the comprehensive land use plan or land use analysis whether lands assessed as unsuitable are unsuitable for all or only certain stipulated methods of coal mining (43 CFR 3420.2-3(c), 3461.3).

§ 3461.1 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. All Federal lands which are recommended for inclusion in any of the above systems or categories by the administration in legislative proposals submitted to the Congress or which are required by statute to be studied for inclusion in such systems or categories shall be considered unsuitable.

(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. The application of the portion of this criterion applying to land proposed for inclusion in the listed systems does not apply to lands: to which substantial legal and financial commitments were made 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.

(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, or for agricultural crop production 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.* 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) For which owners of occupied buildings 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 area of outstanding scenic quality or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable. 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.

(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.

(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 districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance on Federal lands which are included in or eligible for inclusion in the National Register of Historic Places, and an appropriate buffer zone around the outside boundary of the designated property (to protect the inherent values of the property that make it eligible for listing in the National Register) as determined by the surface management agency, in consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Office shall be considered unsuitable.

(2) *Exceptions.* All or certain stipulated methods of coal mining may be allowed if the surface management agency determines, after consultation with the Advisory Council on Historic Preservation and State Historic Preservation Office that the direct and indirect effects of mining, as stipulated, on a property in or eligible for the National Register of Historic Places will not result in significant adverse impacts to the property.

(3) *Exemptions.* The application of this criterion to a property listed in the National Register is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977. The application of the criterion to buffer zones and properties eligible for the National Register 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) With the concurrence of the state, the area or site is of regional or local significance only;

(ii) The use of appropriate stipulated mining technology will result in no significant adverse impact to the area or site; or

(iii) 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 threatened or endangered plant and animal species, 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.

(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.

(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.

(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.

(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.

(o)(1) *Criterion Number 15.* Federal lands which the surface management agency and the state jointly agree are fish and wildlife habitat for resident species of high interest to the state and which are essential for maintaining these priority wildlife 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 most critical for deer, antelope, and elk; and

(iii) Migration corridors for elk.

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) shall be considered unsuitable unless, after consultation with Geological Survey, the surface management agency determines that all or certain stipulated methods of coal mining can be undertaken without substantial threat of loss to people or property, and to the natural and beneficial values of the floodplain on the lease tract and downstream.

(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:

(i) The surface management agency 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; and

(ii) The municipality (incorporated entity) or the responsible governmental unit concurs in writing in the issuance of the lease.

(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 that state, 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, 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.

§ 3461.2 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. Surface impacts include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

§ 3461.3 Unsuitability assessment procedures.

§ 3461.3–1 Assessment and land use planning.

(a)(1) 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 of the unsuitability criteria. Exceptions should only be considered when an unsuitability condition exists in an area free of other unsuitability conditions, and for which the responsible official would otherwise regard coal mining as a likely use. Should the authorized officer further determine that conditions for an exception exist, the authorized officer shall state each area to which an exception has been applied. The authorized officer 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.

(2) At such time as the criteria and exceptions are applied in land use planning, the authorized officer shall invite public comment thereon through a notice published in the **Federal Register** and a newspaper of general circulation in the area covered by the plan or analysis. The notice shall announce the availability of a map or maps displaying those areas:

(i) to which no criteria would apply;

(ii) to which a criterion or criteria cannot be applied pending collection of data under paragraph (b) below;

(iii) to which a criterion would apply;

(iv) to which a criterion would apply where the authorized officer does not intend to consider an exception; and

(v) to which a criterion and an exception thereto have been applied.

(b)(1) The authorized officer shall make his 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 subsection (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 activity planning, or, in the case of criterion 19, prior to approval of a permit, the data needed to make an assessment with reasonable certainty would be generated. 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 assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment.

(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.

§ 3461.3–2 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 § 3420.2–6 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. Extensions of time that do not jeopardize the planning schedule may be granted for reply.

(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. If the authorized officer takes action not in accordance with advice received in consultation under this subpart, he or she shall set forth the reasons therefor in the comprehensive land use plan, land use analysis or other document containing the results of the application of the specific unsuitability criterion or exception.

§ 3461.3-3 Findings.

When the authorized officer assesses the Federal lands as unsuitable, the authorized officer shall prepare a statement for such lands on the potential coal resources, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 3461.4 Relationship of leasing to unsuitablity assessment.

§ 3461.4-1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall be applied, prior to lease issuance, to all lands leased after the issuance of these regulations, including lands in noncompetitive (preference right) leases, applications and applications for leases under subpart 3425 of this title.

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

(1) During land use planning or the environmental assessment conducted for a specific lease application, lease modification, or preference right lease application under either § 3425.2 or § 3430.3 of this title; or

(2) During land use planning under the provisions of § 3420.1-5 of this title.

§ 3461.4-2 Application of criteria on leased lands.

(a) The unsuitability criteria shall be applied to all non-producing leases, issued prior to the effective date of these regulations. The Bureau of Land Management may await the lessee's submission of a mining plan before applying the unsuitability criteria. This shall not preclude assessment of lands in an existing lease as part of the normal land use planning process.

(b) An unsuitability assessment of leased lands in the course of land use planning shall be conducted under the procedures in § 3461.3 of this title. An unsuitability assessment of leased lands during mining plan review shall, be conducted, to the extent practicable, consistent with the procedures in § 3461.3 of this title. In either case, in assessing leased lands, if any criterion applies, each exception to it shall be applied. If a criterion does apply and the conditions do not permit an exception, a further decision shall be made on whether the leased land is exempt from the criterion because of the source of the authority for the criterion. Mining may be permitted on land to which no criterion applies; on land where a criterion applies but where the conditions permit an exception; and on land to which a criterion applies, no exception applies, but which is exempt from that criterion.

(c) If a lease area or portion of a lease area is assessed to be unsuitable for all or certain stipulated methods of coal mining or the lease is found to be incompatible with the comprehensive land use plan or land use analysis, the Secretary may, except as provided in § 3461.5 of this title, negotiate with the lessee for exchange of coal lease bidding rights or other mineral leases or coal lease modifications as described in subpart 3435 of this title. If a lease area is assessed to be unsuitable because of impacts to alluvial valley floors, the Secretary may initiate negotiations with the lessee to exchange the lease for another Federal coal lease in an area acceptable for mining operations under subpart 3436 of this title.

§ 3461.5 Petitions to designate lands.

(a) Petitions to designate or terminate a designation of Federal lands as unsuitable for all or certain stipulated methods of surface coal mining shall be filed with and processed by the Surface Mining Officer under 30 CFR Part 769.

(b) After assessing unleased lands to be unsuitable in a comprehensive land use plan or land use analysis, the surface management agency may petition the Surface Mining Officer to designate the lands as unsuitable under 30 CFR Part 769.

(c) After assessing leased lands to be unsuitable under any criterion, its exceptions and exemptions, the surface management agency shall petition the Surface Mining Officer to designate the lands as unsuitable under 30 CFR Part 769.

(d) The completion of the unsuitability assessment by the surface management agency and filing of the petition under paragraph (b) or (c) of this section shall be deemed completion of the procedures in 30 CFR Part 769.14(c), (e)(1) and (g), and shall be deemed a recommendation for approval under 30 CFR 769.14(e)(2).

§ 3461.6 Exploration.

(a) Assessment of any area as unsuitable for all or certain stipulated methods of coal mining 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 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.

Subpart 3465—Surface Management and Protection

§ 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.

§ 3465.0-2 Objective.

This subpart is designed to ensure the use of effective and reasonable coal mining methods, and the reclamation of mined lands in a manner that will minimize any adverse social, economic, and environmental effects of coal mining.

§ 3465.0-3 Authority.

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

§ 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.

§ 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 permit (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.

§ 3465.2 Obligations and standards of performance.

(a) A lessee or a holder of a license to mine shall comply with the regulations in this subpart and with the terms and conditions of the lease or license to mine.

(b) A lessee or a holder of a license to mine shall comply with the applicable performance standards in 30 CFR Chapter VII, Subchapter D, and 30 CFR 211.

(c) When changed conditions or newly discovered information indicate that an approved permit (30 CFR Part 741) needs to be reviewed or supplemented, the authorized officer shall recommend any appropriate revision or supplement to the Surface Mining Officer.

(d) The authorized officer may, in the issuance of any lease or license to mine, develop and include additional specific stipulations in the lease or license to mine involving special management consideration.

§ 3465.3 Inspections and noncompliance.

§ 3465.3-1 Inspections.

The authorized officer, Mining Supervisor, or inspectors from the Surface Mining Officer 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.

§ 3465.3-2 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 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 to the Mining Supervisor 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.

§ 3465.3-3 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 30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D, 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.

§ 3465.4 Alternative postmining land use.

(a) When a permit applicant, who holds a lease or a license to mine, proposes any postmining land use that is substantially different from the land use prior to exploration and mining, the Surface Mining Officer, with the approval of the authorized officer of the appropriate surface management agency, may review and approve or disapprove any postmining land use in accordance with the criteria established in 30 CFR 816.133.

(b) If the Surface Mining Officer determines that a decision to approve any alternative postmining land use or alternative rehabilitation practices would constitute a major Federal action requiring an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and that the decision has not been discussed in any environmental impact statement that may have been prepared for the issuance of the lease or the approval of the permit, a statement shall be prepared by the Surface Mining Officer.

§ 3465.5 Bonding.

(a) A lease bond for compliance with the terms of a lease or license to mine shall be furnished in accordance with the applicable provisions of subpart 3474 of this title.

(b) The provisions governing reclamation performance bonds are found in 30 CFR Part 742.

(c) A lease or license to mine may be denied any applicant or successful bidder who has previously forfeited a bond because of failure to comply with a permit unless the affected lands covered by that plan or permit have been reclaimed without cost to the Federal Government. Nothing in this section shall modify or limit the discretionary authority of the authorized officer to deny for other causes any bid or application for a lease or license to mine.

§ 3465.6 Conduct, completion, and abandonment of operations.

All terms of the permit shall be administered under 30 CFR Chapter VII, Subchapter D, and 30 CFR 211.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3471—Coal Management Provisions and Limitations

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Authority: 30 U.S.C. 181 et seq. and 30 U.S.C. 351–359

Subpart 3471—Coal Management Provisions and Limitations

§ 3471.1 Land description requirements.

§ 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.

§ 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.

§ 3471.2 Effect of land transactions.

§ 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 lands subject to the Mineral Leasing Act for Acquired Lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under that act.

(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 subject in each case to such appropriate conditions as may be prescribed.

(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 (43 CFR 3420.6).

§ 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) If the state, or local entity opposes the issuance of the license to mine or lease, the facts submitted in support of the opposition must be carefully considered and each case separately decided on its merits. 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.

§ 3471.3 Cancellation or forfeiture.

§ 3471.3–1 Cancellation or forfeiture for cause.

Any lease or license to mine may be cancelled or forfeited for violation of the act under which the lease or license to mine was issued, applicable Federal regulations, or the terms and conditions of the lease or license to mine (43 CFR 3452.2).

§ 3471.3–2 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 has the right to be dismissed promptly as a party by showing that he or she holds and acquired his or her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws. No hearing shall be necessary on such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(c) If, during any such proceeding, 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.

§ 3471.3–3 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.

§ 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 3472.1–1(g).)

Subpart 3472—Lease Qualification Requirements

§ 3472.1 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.

§ 3472.1–1 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 § 3472.1–2 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) After August 4, 1986, no lease shall be issued to any applicant or bidder that holds and has held for 10 years any lease from which coal is not being produced, except as authorized under § 3475.4 of this title, in commercial quantities as defined in § 3400.0–5(i)(1) of this title.

(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.

§ 3472.1-2 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 46,080 acres in any one state and in no case on more than 100,000 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 100,000 acres in the United States on August 4, 1976, 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 100,000 acres within the United States.

(b)(1) In computing acreage held, owned, or controlled, the accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party owning an interest in a corporation or association shall be the party's proportionate part of the corporation's or association's accountable acreage. However, no person shall be charged that person's pro rata share of any acreage holdings of any association or corporation unless that person is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(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.

§ 3472.2 Filing of qualification statements.

§ 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 Part 3427).

§ 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 must 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 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 and class 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. Any applicant who has previously filed a qualification statement may submit either a serial number reference to the record and office where the statement is filed or a new qualification statement. Applications on behalf of a corporation executed by other than an officer named under subsection (c)(1) of this section shall be accompanied by proof of the signatory's authority to execute the instrument except in a case where an officer of a corporation signs an application on behalf of the corporation.

(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 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.

§ 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:

(i) a statement over the signature of the attorney-in-fact or agent; and

(ii) 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.

§ 3472.2 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.

§ 3472.2-5 Special qualifications, public bodies.

(a) To qualify to bid for a lease on a tract offered for sale under § 3420.1-4 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 § 3420.1-4(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.

Subpart 3473—Fees, Rentals, and Royalties

§ 3473.1 Payments.

§ 3473.1-1 Form of payment.

Payments shall be made in cash, or by money order, personal check, certified check, bank draft, or bank cashier's check payable to the Bureau of Land Management or Geological Survey, as appropriate.

§ 3473.1-2 Where paid.

(a) Payments for all licenses to mine shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(b) Payments of all rentals for non-producing leases shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(c) Rentals and royalties on producing leases shall be paid to the Mining Supervisor for the area in which the lands under lease are situated.

§ 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.

§ 3473.2 Fees.

§ 3473.2-1 General fee provisions.

(a)(1) A filing fee of $250.00 shall accompany each application for a lease, exploration license or lease modification.

(2) Each original application or any renewal application for a license to mine shall be accompanied by a $10.00 filing fee.

(3) A filing fee of $50.00 shall accompany each application for approval of any transfer of a lease or an interest therein.

(b) The fee shall be retained as a service charge even if the application is rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted for filing; it will be returned to the applicant without action.

§ 3473.2-2 Exemptions from fee provisions.

No filing fee is required for:

(a) An application for a license to mine filed by a relief agency as described in subpart 3440 of this title; or

(b) Preference right lease applications.

§ 3473.3 Rentals and royalties.

§ 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 production or advance royalties for that year.

(c) On leases issued or readjusted after August 4, 1976, rental payments shall not be credited against royalties.

§ 3473.3-2 Royalties.

(a)(1) Royalty rates shall be determined on an individual case basis prior to lease issuance. For competitive leases, initial royalty rates shall be set out in the notice of lease sale.

(2) 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.

(3) A lease shall require payment of royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

(4) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

(b)(1) The Mining Supervisor 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.

(2) The advance royalty for each lease shall be based on a percentage of the value of a minimum number of tons of coal, and the percentage shall not be less than the percentage prescribed in that lease for the production royalty. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the approval date of the mining plan for the LMU of which the lease is a part; for any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976.

(3) The use of advance royalties in lieu of continued operation shall not be permitted for more than a total of 10 years during the life of any lease, including the life of the lease after readjustment. The amount of any advance royalties paid on a lease issued or readjusted after August 4, 1976, shall be credited against production royalties, except that no payment of an advance royalty during the first 20 years of a lease issued after August 4, 1976, may be used as credit against production royalty due after the 20th year of that lease.

(4) The Mining Supervisor may, upon notifying the lessee six months in advance, cease to accept advance royalties in lieu of the requirement of continued operation.

(c) An overriding royalty interest or production payment shall not be created by a lease transfer, surface owner consent, or otherwise (1) that exceeds 50 percent of the rate of royalty first payable to the United States under the lease or (2) that, when added to any other overriding royalty interest, exceeds that percentage. Where an interest in the leasehold or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management that he has made substantial investments for improvements on the land covered by the transfer that would justify a higher payment.

(d)(1) In order to encourage the greatest ultimate recovery of coal, and in the interest of conservation, the Secretary, whenever he 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 below 5 percent for underground coal.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the Mining Supervisor. The application shall contain the serial number of the lease, the Bureau of Land Management State Office, the name of the record title holder and any operator or sublessee, and the description of the lands in the manner provided by § 3471.1 of this title.

(i) Each application shall include the number and location of the mine, a map showing the extent of the mining operations, a tabulated statement of the coal mined and subject to royalty for each month covering a period of not less than 12 months immediately prior to the date of filing of the application, and the average production per day mined for each month, with complete information as to why the minimum production or continued operation requirement was not met.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of coal, and all facts indicating whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in 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.

(iii) The applicant shall also file a copy of agreements between the lessee and the holders of any royalty interests to a permanent reduction of all other royalties from the leasehold so that the total royalties owed the holders of royalty interests will not be in excess of one-half of the Government royalties, should the royalty reduction be granted.

§ 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. The Mining Supervisor is authorized to act on applications for suspension of operations or production, or both, filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(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.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Mining Supervisor. Rental and minimum royalty payments will be suspended during such period of suspension of all operations and production, beginning with the first day of the lease month on which the suspension of operations and production becomes effective. If the suspension of operations and production becomes effective on any date other than the first day of the lease month, rental and minimum royalty payments shall be suspended beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the 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 due under the lease.

(d) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary in the interest of conservation.

(e) A suspension under this section affects only the operating and producing requirements of the lease, it does not suspend the permit and the lessee's reclamation obligations under it.

Subpart 3474—Bonds

§ 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; 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 bond covering another lease within the same logical mining unit.

§ 3474.2 Type of bond required.

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease except reclamation, shall be furnished in the amount determined by the authorized officer. The amount of the bond may be changed if the authorized officer considers such a change to be proper and necessary.

(b) For exploration licenses, a bond must be furnished in accordance with § 3410.3–7 of this title.

§ 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) The authorized officer may release that amount of any outstanding lease bond which relates to the performance of mining and reclamation plan permit obligations.

(c) Upon approval of a logical unit mining including more than one Federal lease, the lease bonds shall be consolidated into a single bond for the leases in the LMU.

§ 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.

§ 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.

§ 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.

Subpart 3475—Lease Terms

§ 3475.1 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.

§ 3475.2 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.

§ 3475.3 Land description.

Compliance with § 3471.1 of this title is required.

§ 3475.4 Diligent development and continued operation.

(a) Each lease shall require (1) diligent development, and (2) either (i) continued operation except when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advance royalty as described in § 3473.3–2(b) of this title.

(b) For coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased as follows:

(1) Upon application by the lessee, the 10 lease-year period shall be extended by an amount of time equal to the period during which diligent development is, in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, and (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In determining whether any of the conditions listed in subdivisions (i), (ii), or (iii) of this paragraph occurred and whether one or more of those conditions did, in fact, significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under subdivision (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application by the lessee, the Secretary may grant one extension, not exceeding five years, of the 10 lease-year period because of (i) time needed to complete development of advanced technology, e.g., in situ, gasification or liquefaction processes; (ii) the magnitude of the project (ordinarily magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the 10-year period. Regardless of the reason for granting an extension, the lessee shall produce the first one-fortieth of the LMU reserves before the end of the extended term.

(c) At the time when the Secretary grants an extension under paragraphs (a) and (b) of this section, the lessee shall be notified of the revised date by which coal shall be produced in commercial quantities.

§ 3475.5 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU containing more than a single Federal lease shall be established and applied by the Geological Survey. Each lease shall automatically be considered to constitute an LMU on the effective date of the lease or June 1, 1976, whichever is later. The lease LMU may, at a later date, be enlarged by the addition of other Federal leases or with interests in non-Federal coal deposits, or both. An LMU containing any interest other than a single Federal lease shall become effective only at the direction of the Mining Supervisor, or by designation during the normal tract delineation phase of the coal activity planning process, or upon its approval by the Mining Supervisor when requested by the lessee. The Mining Supervisor shall not direct or approve the establishment of such an LMU unless it is determined that the maximum economic recovery of all Federal coal deposits in the LMU will be achieved. The boundaries of an LMU may later be changed either upon

application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer, or by direction of the Mining Supervisor after consultation with the authorized officer.

(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 the requirements imposed on the LMU of which it has become a part. In particular, diligent development, continued operation, and production in commercial quantities anywhere within the LMU, with respect to either Federal or non-Federal coal deposits, shall be considered to have occurred on each Federal lease in the LMU. The rental and royalty payments of all Federal leases in an LMU shall be combined, and advance royalties paid on any Federal lease in that LMU may, at the request of the lessee, be credited against those combined royalties.

(c) If, under the provisions of § 3452.1, the authorized officer accepts the relinquishment of any coal deposits in a lease, the LMU reserves shall be adjusted. When the Mining Supervisor is determining the LMU reserves, the lessee shall be consulted about any coal deposits subject to the lease which the lessee does not intend to mine. The lessee shall also be consulted about the rights the lessee is prepared to surrender to decrease the LMU reserves upon which the requirements of diligent development, continued operation, and production in commercial quantities will be based.

PART 3041 [Deleted]

PARTS 211 and 3460 [Amended]

2. 43 CFR Part 3041 is deleted in its entirety. These provisions are transferred to 30 CFR Chapter VII, 30 CFR Part 211, and 43 CFR Part 3460.

§ 3500.0–3 [Amended]

3. 43 CFR 3500.0–3 is amended by the deletion of paragraph (a)(1) and the renumbering of paragraphs "(a)(2)" through "(a)(6)" as "(a)(1)" through "(a)(5)", respectively.

§ 3500.0–5 [Amended]

4. 43 CFR 3500.0–5 is amended by the deletion of subsections (d) through (i).

§ 3500.1–1 [Amended]

5. 43 CFR 3500.1–1 is amended by the deletion of "coal;" wherever that word appears.

§ 3500.1–3 [Amended]

6. 43 CFR 3500.1–3(c)(1) and (f) are amended by the deletion of "coal,".

§ 3501.1–3 [Amended]

7. 43 CFR 3501.1–3, introductory text, is amended by the deletion of "; except for coal cases where noncontiguous tracts can be efficiently worked as a single mine or unit".

§ 3501.1–4 [Amended]

8. 43 CFR 3501.1–4 is amended by the deletion of paragraph (b)(1) and the renumbering of paragraphs "(b)(2)" through "(b)(6)" as "(b)(1)" through "(b)(5)", respectively.

§ 3501.1–5 [Amended]

§ 3501.2–1 [Amended]

9. 43 CFR 3501.1–5 and 3501.2–1 are amended by the deletion of "(a) *All leasable minerals except coal.* ", and by the deletion of paragraph (b) in its entirety. Subparagraphs (1)–(5) of 3501.1–5 are redesignated as new paragraphs (a)–(e) respectively, and subparagraphs (1)–(7) of 3501.2–1 are redesignated as new paragraphs (a)–(g) respectively.

§ 3501.2–3 [Amended]

10. 43 CFR 3501.2–3(a) is amended by the deletion of the word "coal".

§ 3501.3–2 [Amended]

11. 43 CFR 3501.3–2(b)(2) is amended by the deletion of subparagraph (i) and the renumbering of subparagraphs "(2)(ii)" through "(2)(v)" as "(2)(i)" through "(2)(iv)", respectively.

§ 3502.1–1 [Amended]

12. 43 CFR 3502.1–1 is amended by the deletion of subsection (c).

13. 43 CFR 3502.2 is amended by the revision of section 3502.2–2 to read as follows:

§ 3502.2 Individuals—Statement of citizenship.

If the applicant is an individual, he must submit with each application for permit or lease a statement over his own signature setting forth the applicant's citizenship.

§ 3502.9 [Deleted]

14. 43 CFR 3502.9 is deleted in its entirety.

§ 3503.2–2 [Amended]

15. 43 CFR 3503.2–2 is amended by the deletion of subsection (a) and the deletion of "(b)".

§ 3503.3–1 [Amended]

16. 43 CFR 3503.3–1(b) is amended by the deletion of paragraph (1) and the renumbering of paragraphs "(b)(2)" through "(b)(6)" as "(b)(1)" through "(b)(5)", respectively.

§ 3503.3–2 [Amended]

17. 43 CFR 3503.3–2(b) is amended by the deletion of paragraph (1) and the renumbering of paragraphs "(b)(2)" and "(b)(3)" as "(b)(1)" and "(b)(2)", respectively.

18. 43 CFR 3503.3–2(c)(3) is amended by the deletion of subparagraph (i) in its entirety and the redesignation of subparagraph (c)(3)(ii) as paragraph (c)(3) to begin:

(c) * * *

(3) *Exception—Phosphate.* * * *

19. 43 CFR 3503.3–2(d)(1), .3–2(d)(2), .3–2(d)(2)(i), and .3–2(e)(5) are amended by the deletion of "coal,".

§ 3503.3–3 [Deleted]

20. 43 CFR 3503.3–3 is deleted in its entirety.

§ 3504.2–1 [Amended]

21. 43 CFR 3504.2–1(b)(1) is amended by the deletion of "not less than $1,000 for coal leases;".

§ 3504.5–1 [Amended]

22. 43 CFR 3504.5–1, .6–1, and .7–1 are amended by the deletion of "coal,".

§§ 3507.0–1—3507.5 [Subpart 3507] [Deleted]

23. 43 CFR Subpart 3507 is deleted in its entirety. These provisions are transferred to 43 CFR Subpart 3410.

§ 3511.4–4 [Deleted]

24. 43 CFR 3511.4–4 is deleted in its entirety.

§ 3520.0–3 [Amended]

25. The second sentence of 43 CFR 3520.0–3(a) is amended by substituting "Group 3400" for "Subpart 3525".

§ 3520.1–1 [Amended]

26. 43 CFR 3520.1–1(a) is amended by the deletion of "*Coal,*" and the deletion of ", or for a prospecting permit issued for coal, if the permittee shows to the Secretary that he discovered commercial quantities of coal".

27. 43 CFR 3520.1–1(c) is amended by deleting the words "and *commercial quantities*" from the caption, and by deleting the words "commercial quantities of coal or" from the first sentence.

§ 3520.2–1 [Amended]

28. 43 CFR 3520.2–1 is amended by the deletion of paragraph (a)(3).

§ 3520.2–5 [Deleted]

29. 43 CFR 3520.2–5 and 3520.2–6 are deleted in their entirety.

§ 3521.1-1 [Amended]

30. The sixth sentence of 43 CFR 3521.1-1(b)(1) is amended to read as follows: "Data submittals shall include, at a minimum, average grade of the ore."

31. 43 CFR 3521.1-1(c)(4) is amended by the deletion of "as part of a logical mining unit".

32. 43 CFR 3521.1-1(e) is amended to read as follows:

(e) *Amount of detail required.* The information submitted by the permittee shall be sufficient to enable the authorized officer to ascertain whether the permittee's showing has a reasonable factual basis and supports his assertion that:

(1) He has found a valuable deposit of the minerals covered by the permit; and

(2) The land is chiefly valuable for the mineral deposit if the permit was issued for sodium, sulphur, or potassium.

33. 43 CFR 3521.1-1(h)(1) is amended to read as follows:

(1) That the permittee has presented information that has a reasonable factual basis, and that the information supports the permittee's assertion that:

(i) he has found a valuable deposit of the mineral covered by the permit; and

(ii) if the permit was issued for sodium, sulphur or potassium, that the land is chiefly valuable for the mineral deposit; and

34. 43 CFR 3521.1-1(i) is amended by the deletion of paragraph (1); by renumbering paragraph "(2)" as "(1)", and deleting from it "if the permit was issued for a mineral other than coal"; and by renumbering paragraph "(3)" as "(2)".

§ 3521.1-1 [Amended]

35. 43 CFR 3521.1-1(j)(3) is amended to read as follows:

(3) At the hearing the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of the minerals, and if his application is for a sodium, sulphur or potassium lease, that the land is chiefly valuable for the mineral deposit discovered.

§ 3521.2-1 [Amended]

36. 43 CFR 3521.2-1(a)(1)(i) is amended by the deletion of the sentence: "Competitive coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525."

§ 3522.2-1 [Amended]

37. 43 CFR 3522.2-1 is amended by the deletion of "(a)" and the deletion of subsection (b) in its entirety.

§ 3523.2-1 [Amended]

38. 43 CFR 3523.2-1(b) is amended by deleting paragraph (1) in its entirety, by deleting the designation "(i)" in subparagraph (2), and by redesignating the remainder of subparagraph (2) as paragraph (b) to begin as follows:

(b) Exception—Solide (Hardrock) minerals—Default. Except as provided.
* * *

§ 3524.2 [Deleted]

§ 3524.2-1 [Deleted]

39. 43 CFR 3524.2 and 3524.2-1 are deleted in their entirety.

§ 3524.3 [Redesignated]

§ 3524.3-1 [Redesignated]

40. 43 CFR 3524.3 and 3524.3-1 are renumbered as "3524.2" and "3524.2-1", respectively.

Subpart 3525 [Deleted]

41.43 CFR Subpart 3525 is deleted in its entirety.

§ 3526.0-1 [Amended]

42. 43 CFR 3526.0-1 is amended by the deletion of "or for the grant of a certificate of bidding rights as herein defined and usable in competitive coal lease sale, and/or the grant of modifications to an existing coal lease or coal leases adding contiguous coal lands or deposits,".

§ 3526.0-3 [Amended]

43. 43 CFR 3526.0-3(f) is deleted in its entirety.

§ 3526.0-5 [Deleted]

44. 43 CFR 3526.0-5 is deleted in its entirety.

45. A new section 43 CFR 3526.0-7 is added to read as follows:

§ 3526.0-7 Scope.

(a) 43 CFR Subpart 3435 contains the parallel provisions related to exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications. Regulations in both of these two subparts may be used in an inter-mineral exchange.

(b) In the case of any conflict between this subpart and the regulations in 43 CFR Subpart 3435, the provisions governing the lease or lease interests to be issued shall control.

§ 3526.1 [Amended]

46. 43 CFR 3526.1 (a) and (b) are amended by the deletion of ", coal bidding rights, or grants of coal lease modifications".

§ 3526.2 [Amended]

47. 43 CFR 3526.2(a)(3) is amended by the deletion of ", or grant of coal lease modifications."

48. 43 CFR 3526.2(b) is amended by the deletion of "or commercial quantities of coal".

49. 43 CFR 3526.2(c) is amended by the deletion of the designation "(1)", and by the deletion of subparagraphs (2) and (3) in their entirety.

50. 43 CFR 3526.2(d)(1) is amended by the deletion of the last sentence reading, "Coal lands or deposits may only be considered where suitable for addition to existing coal leases under the Secretary's authority to modify coal leases."

51. 43 CFR 3526.2(e) is amended by the deletion of the word *"coal"*.

52. 43 CFR 3526.2(f) is amended by the deletion of "or other terms regarding coal leases" and by the deletion of "or coal lease modification".

3526.3-1 [Amended]

53. 43 CFR 3526.3-1(a) is amended by the deletion of "or coal lease modifications" and the deletion of "or modified coal lease".

54. 43 CFR 3526.3-1(b)(3) is amended by the deletion of "or modified coal lease".

§ 3526.3-2 [Deleted]

55. 43 CFR 3526.3-2 is deleted in its entirety.

Subpart 3530 [Deleted]

56. 43 CFR Subpart 3530 is deleted in its entirety. Its provisions have been transferred to 43 CFR Subpart 3440.

§ 3550.1-1 [Amended]

57. The caption of 43 CFR 3550.1-1(a)(1) is amended to read, *"Leasable minerals other than oil and gas and coal."*

§ 3563.1-1 [Amended]

§ 3564.1 [Amended]

58. 43 CFR 3563.1-1 and 3564.1 are amended by the deletion of "coal,".

§ 3564.6 [Amended]

59. 43 CFR 3564.6 is amended by the deletion of "coal in Part 211 and to".

60. The second sentence of 43 CFR 3564.6 is amended to read, "Leases for minerals subject to this subpart not listed in the preceding sentence will be governed by the operating regulations in 30 CFR Part 231.

§ 3565.0-3 [Amended]

61. 43 CFR 3565.0-3 is amended by the deletion of "coal,".

§ 3566.2 [Amended]

62. In 43 CFR 3566.2, "30 CFR Part 211" is amended to read "30 CFR 231".

§ 3568.2-2 [Amended]

63. 43 CFR 3568.2–2 is amended by the deletion of "coal,".

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