

31 was not intended to be all inclusive and that the introductory sentence has been changed to so indicate.

11. The BOM commented that the abbreviation "PH&S" should be written out to distinguish it from a chemical interpretation. The DER has changed "PH&S" to "Public Health and Safety" where there is a likelihood of confusion in the wording.

12. The BOM commented that the Plan does not totally address the problems of past mining as required by 30 CFR 884.13(f)(iv). Specifically, problems of iron ore, quarries, slate, and gravel mining are not discussed. The Office does not consider it necessary for Pennsylvania to address noncoal abandoned mine land problems at this time since noncoal problems will not be considered for the first three years, which is the time period the Plan covers.

13. The USFS commented that the Pennsylvania Bureau of Forestry should be placed on the State Reclamation Committee. The DER has included the Bureau of Forestry as a coordinating agency on the State Reclamation Committee.

Additional Findings

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Pennsylvania Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures, and organizations of the Commonwealth's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Pennsylvania Plan is categorically excluded from the National Environmental Policy Act's requirements. As a result, no environmental assessment or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also an environmental analysis or an EIS will be prepared for the approval of grants for abandoned mine land reclamation projects under 30 CFR Part 886.

The good cause for making this rule effective upon date of publication is: (1) The Office of Surface Mining wants to minimize the time between the approval

of Title V regulatory programs and Title IV State reclamation programs; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

J. Steven GILES,

Acting Director, Office of Surface Mining.

Daniel N. Miller, Jr.,

Assistant Secretary—Energy & Minerals.

PART 938—PENNSYLVANIA

Therefore, Part 938 is amended by adding § 938.20 to read as follows:

§ 938.20 Approval of the Pennsylvania Abandoned Mine Land Reclamation Plan.

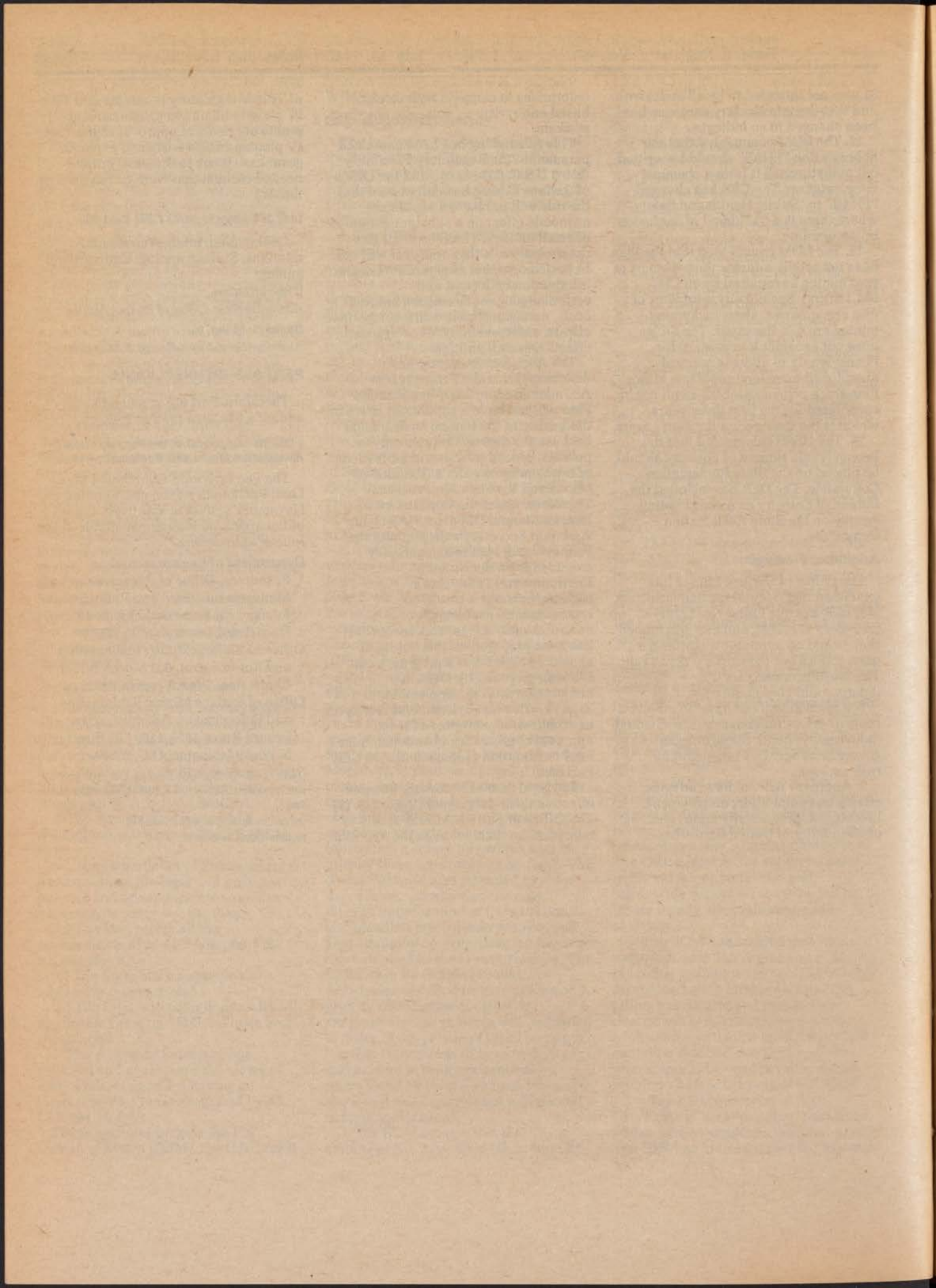
The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

Department of Environmental Resources, Office of Resources Management, Third and Reilly Street, Evangelical Press Building, 2nd Floor, Harrisburg, Pennsylvania 17120
Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25311
Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

[FR Doc. 82-20661 Filed 7-29-82; 8:45 am]

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United States Patent Federal Register

Friday
July 30, 1982

Part IV

Department of Commerce

Patent and Trademark Office

Revision of Patent and Trademark Fees

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2714-129]

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent and trademark cases to establish fee-related procedures and fees in amounts which would comply with the requirements of either Public Law 96-517 or H.R. 6260, dependent upon which is effective on October 1, 1982. This action is necessary at this time in view of the requirements to establish fees and procedures contained in Public Law 96-517 and the requirements which would also be present under H.R. 6260 enacted as a Public Law. This final rule is being issued in two sections with the first section relating to patent fees and the second section relating to trademark fees. This final rule is also being issued in alternative form so that the proper fees and procedures will become effective on October 1, 1982, under either Public Law 96-517 or the Public Law which results from enactment of H.R. 6260. Thus, if Public Law 96-517 remains fully effective on October 1, 1982, the rule changes contained herein which are common to Public Law 96-517 and H.R. 6260, as well as those specific to Public Law 96-517, contained in Alternative A of each section, will become effective. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, the rule changes contained herein which are common to Public Law 96-517 and H.R. 6260, as well as those specific to H.R. 6260, contained in Alternative B of each section, will become effective. Thus, the intended effect of this action is to adopt rules which will be effective on October 1, 1982, establishing patent and trademark fees and procedures regardless of whether Public Law 96-517 remains fully effective or whether H.R. 6260 has been enacted.

EFFECTIVE DATE: October 1, 1982.

However, prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

FOR FURTHER INFORMATION CONTACT:

As to the patent rules contact: R.

Franklin Burnett by telephone at (703) 557-3054 or by mail addressed to the Commissioner of Patents and Trademarks, Attention: R. Franklin Burnett, Room 3-11A13, Washington, D.C. 20231.

As to the trademark rules contact: Miss Maude Williams by telephone at (703) 557-2222 or by mail addressed to the Commissioner of Patents and Trademarks, Attention: Miss Maude Williams, Room 3-11C17, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:**Section I—Revision of Patent Fees**

Background: A notice of proposed rulemaking was published in the *Federal Register* on June 28, 1982, at 47 FR 28042-28063 and in the *Official Gazette* on June 29, 1982, at 1019 O.G. 57-120. An oral hearing was held on July 9, 1982. Fourteen written letters and statements were submitted. Five persons testified at the oral hearing. Full consideration has been given to all of the letters, statements, and testimony.

Objectives of Rule Changes: These rule changes are designed primarily to implement the Patent and Trademark Office fees which are provided for by Public Law 96-517, or which would be set in, or provided for by, the Public Law resulting from H.R. 6260.

Public Law 96-517

Public Law 96-517 presently requires that fees be established by the Commissioner for the processing of patent applications from filing through issuance or abandonment, for maintaining a patent in force, and for providing all other services and materials related to patents. Public Law 96-517 requires that by October 1, 1982, fees for the processing of patent applications, other than design patents, be set by the Commissioner to recover in aggregate 25 per centum of the estimated average cost to the Office of such processing. Similarly, fees for processing design patents are to be set to recover in aggregate 50 per centum of the estimated average cost to the Office of such processing. By October 1, 1982, fees for all other services or materials related to patents are to be set to recover the estimated average cost to the Office of performing the service or furnishing the material.

Public Law 96-517 also requires that fees be set for maintaining all patents filed on or after December 12, 1980, other than design patents, in force. It also requires that maintenance fees must recover 25 per centum of the estimated cost to the Office of processing patent applications, other

than design patent applications, by the fifteenth fiscal year following December 12, 1980. Under Public Law 96-517, the maintenance fees are due 3½, 7½, and 11½ years after grant of the patent.

Public Law 96-517 is presently effective and this rule change is designed to implement the fee provisions of that law if it remains fully effective on October 1, 1982. The changes which will become effective on October 1, 1982, under Public Law 96-517 (without enactment of H.R. 6260) are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under only Public Law 96-517, which appear in Alternative A.

H.R. 6260

On June 8, 1982, the House of Representatives passed H.R. 6260. H.R. 6260 would establish a number of statutory fees which the Commissioner is required to charge. Among the more significant of these are fees for filing a patent application, issuing, and maintaining a patent in force. The fees for filing a patent application and issuing a patent would be set forth in section 41(a) of Title 35, United States Code, as proposed to be amended by H.R. 6260. Certain other fees, such as appeal fees, the fee for filing a disclaimer, and fees for filing petitions seeking to revive an abandoned application and for extensions of time, would also be set in section 41(a) of Title 35, United States Code. Section 41(b) of Title 35, United States Code, as proposed to be amended by H.R. 6260, would set forth the fees for maintaining a patent in force. These fees would be due 3½, 7½, and 11½ years after grant of the patent or within a grace period of six months thereafter. Section 41(c) of Title 35, United States Code, as proposed to be amended by H.R. 6260, would provide for the acceptance of maintenance fees after the statutory grace period under certain conditions and with certain effects.

H.R. 6260 would also provide for the reduction by 50 per centum in the fees paid under section 41(a) and (b) of Title 35, United States Code, by independent inventors, small business concerns, and nonprofit organizations, who meet the definitions established, and to be established therefor.

Section 41(d) of Title 35, United States Code, as proposed to be amended by H.R. 6260, would also provide that the Commissioner establish fees for all other processing, services, or materials related to patents which are not covered in section 41(a)-(c) of Title 35, United States Code, to recover the estimated

average cost to the Office of the processing, services, or materials.

The changes which will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under H.R. 6260, which appear in Alternative B. H.R. 6260 includes other provisions which would be the subject of other proposals for rulemaking.

Discussion of Significant Changes

This rulemaking places into the appropriate sections of Title 37, Code of Federal Regulations, the various fees which are due on filing, during the pendency of a patent application, or during the term of a patent. A number of significant changes are made in order to implement either Public Law 96-517 or H.R. 6260.

Under H.R. 6260, and Alternative B of this rulemaking, fees under section 41 (a) and (b) of Title 35, United States Code, would be reduced by 50 per centum for independent inventors, small business concerns, and nonprofit organizations. H.R. 6260 would give the Commissioner authority to establish regulations defining independent inventors and nonprofit organizations. H.R. 6260 defines small business concerns by reference to section 3 of the Small Business Act and regulations established by the Small Business Administration. This rulemaking, in Alternative B, implements the fee system which would be established by H.R. 6260 and lists all applicable fees. Alternative A does not include fees relating to independent inventors, small business concerns, and nonprofit organizations since such fees are not authorized by Public Law 96-517.

Another significant change relates to fees established under Public Law 96-517 and which would be established by H.R. 6260 for petitions for extensions of time to take actions required by the Commissioner in an application. H.R. 6260 would establish a fee of \$50 for filing a petition for a first one-month extension of time, an additional fee of \$100 for filing a petition for a second one-month extension of time which would expire two months after the end of the time period set for taking action, and an additional fee of \$200 for filing a petition for a third one-month extension of time which would expire three months after the end of the time period set for taking action. A fourth one-month extension with an additional fee of \$200 could be requested if additional time was available under the statute. Under H.R. 6260, the Commissioner would have authority to issue regulations providing

when, within any maximum time period permitted by statute, petitions for extensions of time, and the required fee therefor, may be filed. The Commissioner would also not be precluded by H.R. 6260 from waiving the fee for filing a petition for an extension of time where the Office extends the period due to equity considerations or sufficient cause. This rulemaking implements the extension of time provisions of H.R. 6260 by permitting applicants in the majority of situations to file the petition for an extension of time and the fee at the time of and along with the filing of the response for which a non-statutory or shortened statutory time period has been set. This will reduce the amount of paperwork involved and should significantly reduce the expenses of applicants and the Office since resources now devoted to the separate processing of petitions for extensions of time will no longer be required to be expended thereon. The fees are set to provide a proper control on the number of extensions of time given. The same procedures relating to extensions of time which would be established under Alternative B and H.R. 6260 will also be established under Alternative A and Public Law 96-517. Thus, whether the rules are effective on October 1, 1982, under Public Law 96-517 and Alternative A, or under H.R. 6260 and Alternative B, the same procedures for obtaining extensions of time will be in effect with the only differences being in the amount of the fees.

Another significant change relates to the implementation of the fee for revival of an unintentionally abandoned application which would be authorized under H.R. 6260. H.R. 6260 would establish two different fees for filing petitions with different standards to revive abandoned patent applications. The same two fees would be applicable to petitions to accept the delayed payment of the fee for issuing a patent. Under H.R. 6260, a fee of \$50 is established in § 1.17(l) for filing a petition for revival under Sections 133 or 151 of Title 35, United States Code, in accordance with standards presently in effect where the delay resulting in the abandonment, or the delay in payment of the issue fee, was unavoidable. Under H.R. 6260, a fee of \$500 is established in § 1.17(m) for filing each petition for revival, or for acceptance of the delayed payment of an issue fee, where the abandonment or the failure to pay the issue fee was unintentional. A mere statement that abandonment was unintentional plus the \$500 fee is all that is required in this case for this purpose. Under H.R. 6260 and this rulemaking an

applicant would have a choice of which petition and fee to file seeking revival depending on the circumstances involved. The changes discussed in this paragraph cannot be made effective without enactment of H.R. 6260 as a Public Law.

The rulemaking also provides for fees for filing certain petitions which have, in some cases, heretofore, been decided without a charge. These fees are established under Public Law 96-517 and are provided for by the amendment of Section 41(d) of Title 35, United States Code, which would be introduced by H.R. 6260. Under Section 41 of Title 35, United States Code, as amended by Public Law 96-517 or as it would be amended by H.R. 6260, fees are authorized for the processing of various petitions desiring certain actions to be taken regarding patent applications, for the recording of assignments, for reexamination of patents, and for the processing of international applications under the Patent Cooperation Treaty. In general, fees are not being required for those petitions which are supervisory in nature. For example, where applicants are petitioning from an allegedly improper action of the examiner, it is felt that such petitions should be processed and decided without charge since they are not asking for any special privilege but are attempting to correct an allegedly incorrect Office holding. The changes discussed in this paragraph will be in effect on October 1, 1982, whether the rules become effective under Public Law 96-517 and Alternative A, or under H.R. 6260 and Alternative B.

Many of the fees currently set forth in § 1.21 are being increased to reflect the cost of currently performing that service.

Discussion of Specific Sections Changed

The sections changed are grouped in this proposal under three different categories. Those changes which are common to Public Law 96-517 and H.R. 6260 appear first and are numbered 1-54. Those changes which relate only to Public Law 96-517 appear as Alternative A and are numbered 55-62. Those changes which are dependent upon enactment of H.R. 6260 appear as Alternative B and are numbered 63-71. The changes common to Public Law 96-517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law. The changes contained in Alternative A will become effective on October 1, 1982, if H.R. 6260 does not become a Public Law prior to that date. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, Alternative B will

become effective on October 1, 1982, in which case Alternative A will not become effective.

Rule Changes Common to Public Law 96-517 and H.R. 6260

The following sections are changed, effective October 1, 1982, under either Public Law 96-517 or H.R. 6260:

Section 1.11 is amended to change the reference for the reexamination request fee to § 1.20(c).

Section 1.12 is amended to break the section into four paragraphs. Paragraph (a) maintains current practice but adds specific reference to § 1.19(a)(5) which sets the cost of copies. Paragraph (b) maintains current wording except for inserting "patent" after "abandoned" and changing "his" to "applicant's". Paragraph (c) includes new language relating to obtaining copies of assignment records not open to the public. Access can be obtained only with the applicant's permission or by petition with fee to the Commissioner for such access in particular situations. No change in the showing required by petition to obtain access is intended by this amendment. Paragraph (d) contains present language except for reference to the specific rule which sets forth the charge for time consumed in making assignment searches.

New paragraph (e) of § 1.14, sets forth the two ways in which access can be obtained to patent applications which are not open to the public. The two ways are (1) by petitioning and paying the petition fee and approval of the Commissioner of such petition and (2) by obtaining written approval from the applicant.

New § 1.19 provides fees for copies of various documents supplied by the Office. The fees have been grouped into 5 paragraphs. New paragraph (a) provides fees for uncertified copies. Subparagraphs (a) (1) and (2) indicate the prices of printed patent copies. Subparagraph (a)(3) provides a single fee for a copy of an application, as filed, for each 50 pages, or fraction thereof. This practice should make it much easier to determine the amount of the required fee. Subparagraph (a)(4) sets a single fee for a copy of each 100 pages, or fraction thereof, of a patent file wrapper. Subparagraph (a)(5) provides for a charge of 30 cents per page for copies of Office records other than those covered by subparagraphs (a) (1) through (4). Subparagraph (a)(6) provides a fee for a microfiche copy of a microfiche.

Paragraph (b) of § 1.19 sets fees for certified copies of Office documents. Subparagraph (b)(1) sets a fee for certifying Office records. Subparagraph

(b)(2) provides a single fee for searching assignment records, preparing an abstract of the title and certification thereof. Subparagraph (b)(3) provides a fee for comparing copies not prepared by the Office prior to certification in order to provide basis for certification. Paragraph 1.19(c) sets the fees for subscribing to all of the patents issued annually in particular subclasses. This charge is in addition to the normal copy charge under § 1.19(a) (1) and (2). Paragraph 1.19(d) sets the fee for providing patent copies to libraries under 35 U.S.C. 13. Paragraph 1.19(e) provides fees for lists of United States patents in particular subclasses.

Section 1.21 is amended to contain those miscellaneous fees which do not relate to the topics covered in §§ 1.16-1.20. All of the fees in § 1.21 are established under the authority given the Commissioner by 35 U.S.C. 41(d) as amended by Public Law 96-517 or as proposed in H.R. 6260. Paragraph 1.21(a) establishes fees for admission to the examination for registration to practice, registration, reinstatement and issuance of certificates of good standing of patent attorneys and agents. Subparagraph 1.21(b)(1) sets forth the fee for establishing and reinstating deposit accounts, while subparagraph 1.21(b)(2) sets forth the fee due when the balance at the end of each month is below \$40. Paragraph 1.21(c) sets the fee for filing a disclosure document. Paragraph 1.21(d) sets the fee for renting a delivery box. Paragraph 1.21(e) sets the fee for an international-type search report. Although all national applications now receive what is known as an international-type search, if a report thereof is desired in addition to an Office action, the fee set in § 1.21(e) is required. Paragraph 1.21(f) sets a fee for searching Office records for purposes not otherwise specified. Paragraph 1.21(g) sets the fee for tokens for copying machines. Paragraph 1.21(h) sets the fee for recording assignments, agreements, and other documents. Paragraph 1.21(i) sets forth the fee for publishing a notice of availability of a patent for licensing or sale in the *Official Gazette*. Paragraph 1.21(j) sets the fee for the Office providing a duplicate or replacement of a permanent Office user pass. Paragraph 1.21(k) indicates that the Commissioner may specify charges for items and services not otherwise specified at a level to recover the actual cost of providing such an item or service by the Office.

Section 1.24 is revised so that the denomination of coupons sold by the Office will be in more convenient amounts.

Section 1.25 is amended to provide, in paragraph (a), a reference to the fee for establishing a deposit account and a service charge if the end of the month balance is below \$40.00. Paragraph (b) is amended by revising the present sentence to refer to post-issuance fees and by adding a second sentence which would specifically provide in the regulations for the possibility of an applicant giving a general authorization to charge any fee due under §§ 1.16-1.18 in a particular application to a deposit account during the entire pendency of the application. This general authorization would not apply after the patent issues, e.g., to maintenance fees. The last sentence of paragraph (b) permits fees during reexamination to be charged to a deposit account by filing an authorization with the request for reexamination.

Section 1.26 is amended to provide in paragraph (a) that a withdrawal of a request for an oral hearing will not entitle appellant to a refund. Paragraph 1.26(a) raises the amount which will not be refunded without specific request from fifty cents to one dollar. Paragraph (b) relating to refunds of international search fees during subsequent examination of a national application is deleted since such refunds are now covered by reductions in the appropriate fees paid under § 1.445 rather than solely by direct refunds. Paragraph (c) is amended to bring the spelling of "requester" into conformance with that used in other sections of the regulations.

Section 1.45 is amended to provide in paragraphs (b) and (c) for a petition and petition fee to be filed to correct misjoinder of inventorship situations in pending applications. The fee will cover the additional time required by the Office to process such applications.

Section 1.47 is amended to provide for petitions and fees for filing applications signed by less than all inventors, or a person not the inventor.

Section 1.51 is amended to refer to the filing fees in new § 1.16 and to add a new paragraph (c) indicating that applicants may file authorizations to charge fees required under any of §§ 1.16-1.18 to deposit accounts.

Section 1.52 is amended to add a reference in paragraph (a) to new paragraph (d). New paragraph (d) provides in the rules for filing an application in a language other than English if a verified English translation and fee under § 1.17(k) are timely submitted.

Section 1.55 is amended in paragraph (b) to require a petition and fee for processing priority papers submitted after the issue fee is paid.

Section 1.75 is amended to add a reference to § 1.16 and a sentence referring to the fee for multiple dependent claims set forth in § 1.16(d).

Section 1.85 is amended to delete the sentence relating to mounting of informal drawings.

Section 1.86 is removed to delete the reference to the Office draftsman making drawings since such service is no longer available.

Section 1.102 is amended by revising paragraph (a) and adding new paragraphs (c) and (d). Revised paragraph (a) refers to paragraph (b) and added paragraphs (c) and (d). Paragraph (c) requires a petition but no fee where the basis for the petition to make special is the applicant's age or health or the impact of the invention on improving the environment or conservation of energy. Paragraph (d) requires a petition and the fee set forth in § 1.17(i) for petitions to make special on grounds other than those above.

Section 1.103 is amended in paragraph (a) to provide for filing a petition and the fee set forth in § 1.17(i) for a suspension of action except that no fee would be required where the reason for the suspension is the fault of the Patent and Trademark Office. Paragraph (b) is amended to clearly indicate that suspensions are directed to actions by the Office and not responses by the applicant.

Section 1.104, paragraph (d) is amended to change the fee reference to correspond to § 1.21(e).

Section 1.134 is added to indicate that unless applicant is notified of any non-statutory or shortened statutory period in an Office action, a maximum period for response of six months is allowed.

Section 1.135 is amended to provide that if no response is filed within the time set in the Office action under § 1.134 or as it may be extended under § 1.136, the application will be abandoned unless an Office action indicates that another consequence, such as disclaimer, will take place. Paragraph (b) is amended to include a reference to paragraph (a). Paragraph (c) is amended to add that applicant's reply must be a bona fide attempt to respond as well as to advance the case to final action in order for applicant to be given an opportunity to supply any omission.

Section 1.136 is amended to revise the title and provide for two distinct procedures to extend the period for action or response in particular situations. The procedure which is available for use in a particular situation will depend upon the circumstances. Paragraph 1.136(a) permits an applicant to file a petition for extension of time and a fee as in § 1.17 (a), (b), (c), or (d)

up to four months after the end of the time period set to take action except (1) where prohibited by statute, (2) in interference proceedings, or (3) where applicant has been notified otherwise in an Office action. The petition and fee can be filed prior to or with the response. The filing of the petition and fee will extend the time period to take action up to four months dependent on the amount of the fee paid except in those circumstances noted above. Paragraph 1.136(a) will effectively reduce the amount of paperwork required by applicants and the Office since the extension will be effective upon filing of the petition and payment of the appropriate fee and without acknowledgment or action by the Office and since the petition and fee can be filed with the response. Paragraph (b) provides for requests for extensions of time upon a showing of sufficient cause when the procedure of paragraph (a) is not available. Although the petition and fee procedure of § 1.136(a) will normally be available within 4 months after a set period for response has expired, an extension request for cause under § 1.136(b) must be filed during the set period for response. The sentence in paragraph (b) relating to who may grant an extension under paragraph (b) is eliminated thereby providing additional flexibility to designate persons to act on requests under paragraph (b). Extensions of time in interference proceedings are governed by § 1.245.

Section 1.165, paragraph (b) is amended to delete therefrom the last sentence which refers to a fee for mounting copies. Since little or no need has been found for this provision in the rules, it is deleted.

Section 1.171, as amended, adds a reference to § 1.19(b)(2) which sets forth the fee for title reports.

Section 1.177 is amended to require a petition and fee as set forth in § 1.17(i) where it is desired that divisions of a reissue issue on different dates.

Section 1.181 is amended to indicate in paragraph (d) that if a petition to the Commissioner is filed under the provisions of a section which requires a petition fee and the required fee is not paid, the petition will be dismissed. The amendment to paragraph (g) deletes the reference to § 1.183.

Section 1.182 is amended to add a sentence requiring any petition filed under this section to be accompanied by the petition fee set forth in § 1.17(h).

Section 1.183 is amended to specifically refer to the inherent authority of the Commissioner to suspend or waive the rules at the Commissioner's initiative. The amendment also indicates the

Commissioner's authority to designate others to act for the Commissioner in appropriate circumstances. The rule language also requires the payment of the petition fee set forth in § 1.17(h) if a petition to suspend or waive the rules is filed.

Section 1.191 is amended to change the fee reference for filing a notice of appeal to § 1.17(e) and delete the word "primary" since some actions which are subject to appeal are not made by a "primary" examiner.

Section 1.192, paragraph (a), is amended to refer to the fee for filing an appeal brief set forth in § 1.17(f). The present language requiring a showing of sufficient cause for extensions of time for filing the brief and an indication that an oral hearing is desired at the time of filing the brief are removed from paragraph 1.192(a). Under the amendment to paragraph 1.192(a), the provisions of § 1.136 will apply to extensions of time for filing the brief. The time for requesting an oral hearing is now set in § 1.194(b).

Section 1.194 is amended to revise paragraphs (b) and (c) to refer to the fee for oral hearing in § 1.17(g) and to indicate in paragraph (b) that any request for an oral hearing must be made within one month after the mailing date of the examiner's answer.

Section 1.197, paragraph (b), is amended to modify the last sentence relating to extensions of time to make the provisions of § 1.136 applicable thereto. Paragraph 1.197(b) is also amended to limit requests for rehearing, reconsideration or modification of a Board decision to one. This will not significantly change present practice since such requests are now required to be filed within thirty days from the date of the original decision.

Section 1.231, paragraph (a)(1), is amended to change the reference to the fee for filing a request for reexamination to § 1.20(c).

Sections 1.245 and 1.246 are amended to indicate that the provisions of § 1.136 do not apply to time periods in interferences.

Section 1.263 is amended to add a reference to the fee for filing a disclaimer contained in § 1.20(d).

New § 1.268 is added to provide a rule relating to the filing of interference settlement agreements. The rule generally follows 35 U.S.C. 135(c) and provides for filing of petitions and fees in paragraphs 1.268 (b) and (c).

Section 1.292, paragraph (a), is amended to require the payment of the fee set forth in § 1.17(j) with any petition for the institution of public use proceedings.

Section 1.304, paragraph (a), is amended to provide for extension of the time period for filing an appeal or civil action to be subject to the provisions of § 1.136 and refer to the Court of Appeals for the Federal Circuit rather than to the Court of Customs and Patent Appeals.

Section 1.311 is amended to designate the present section as paragraph (a) and revise it in several ways. Paragraph (a) indicates that the notice of allowance will be sent to the correspondence address as indicated under § 1.33. The issue fee (§ 1.18) is indicated as being due 3 months from the date of mailing of the notice of allowance. Paragraph 1.311(b) permits an authorization to be filed either before or after the mailing of the notice of allowance to charge the issue fee to a deposit account.

Section 1.312 is amended to divide the section into two paragraphs and require a petition and payment of the fee under § 1.17(i) for any amendment filed after payment of the issue fee.

Section 1.313 is amended to provide in paragraph (a) clear basis for the Office withdrawing applications from issue on its own initiative or upon petition by applicant accompanied by the petition fee set forth in § 1.17(i). Any accompanying amendment must comply with the requirements of § 1.312. Paragraph (b) clarifies when an application will be withdrawn from issue after assignment of the issue date and patent number.

Section 1.314 is amended to revise the wording to eliminate reference to a portion of the issue fee and adds reference to the possibility that an application in which the issue fee was paid can be withdrawn from issue under § 1.313 or the issuance thereof deferred pursuant to a petition by the applicant and the payment of the petition fee under § 1.17(i).

Section 1.321 is amended to include references in both paragraphs (a) and (b) to the statutory disclaimer fee in § 1.20(d) and delete the reference to § 1.21.

Section 1.324 is amended to include reference to the fee in § 1.20(b) and change the word "application" to "petition".

Section 1.331, paragraph (a), is amended to add a new sentence which gives the citation of the fee for recording assignments and to indicate that instruments recorded on the Government register under Part 7 of Title 37, Code of Federal Regulations, do not require payment of such fee.

Section 1.332 is amended to refer to the fee in § 1.21(h) for recording an assignment.

Section 1.334 is amended to divide the rule into three paragraphs and also

require an address of the assignee so that correspondence can be directed to the assignee if required. New paragraph (c) provides for filing a petition and the fee set in § 1.17(i) seeking to have the patent issue to the assignee where such assignment has not been recorded at the time the issue fee is paid.

Section 1.341, paragraph (h), is amended to refer to the fee set forth in § 1.21(a)(2) for registration of an attorney or agent.

Section 1.347 is amended to add a sentence referring to the fee set forth in § 1.21(a)(3) for reinstatement of an attorney or agent.

Section 1.445 is amended to increase the PCT transmittal fee and search fee to a level needed to cover the cost of performing the required functions. Paragraph 1.445(a)(2) is also amended to provide, in effect, for a reduction in the international search fee due to the United States Patent and Trademark Office as an International Searching Authority where a corresponding United States national application with fee has been filed. In addition, paragraph 1.445(a)(4) is amended to credit the national fee required under § 1.16(a)-(d) where an international search fee has been paid on the corresponding international application to the United States as an International Searching Authority. Where the amount of the credit is in excess of that required for the national fee a request for a refund of the excess under § 1.446(b) may be filed at the time of paying the national fee. The supplemental search fee for inventions in addition to the first, where lack of unity of invention has been found, is reduced since the present fee is more than is required to cover the costs. The national fee amount is the same as the national application filing fees in § 1.16(a)-(d).

Section 1.446(b) is revised to permit a refund of a portion of the search fee to the extent set forth in § 1.445(a)(4), if such refund is requested at the time of paying the national fee.

Section 1.451 is amended in paragraph (b) to revise the citation of the fees for a certified copy.

Section 1.510 is amended to cite the section which sets forth the fee for requesting reexamination. There is no change in the amount of this fee.

Alternative A—Rule Changes Under Only Public Law 96-517

The following sections will become effective under only Public Law 96-517 on October 1, 1982, unless H.R. 6260 is enacted as a Public Law prior to that date:

New § 1.16 relates to application filing fees. Paragraph (a) sets a basic filing fee

of \$150 which will be required in all original patent applications. The term "original" as used in the regulations means "non-reissue". An "original" application can be a first filing, a division, a continuation, or a continuation-in-part application. Paragraph 1.16(b) provides for an additional fee of \$15 for each independent claim in excess of 3 in an original application. New paragraph 1.16(c) provides for an additional fee of \$5 for each claim in excess of 20, whether independent or dependent. A multiple dependent claim is considered to be that number of claims to which direct reference is made. Also, any claim which refers to a multiple dependent claim is considered for fee calculation purposes to be the number of claims to which direct reference is made in the multiple dependent claim. Paragraph 1.16(d) provides for a new fee of \$50 in each application which contains one or more multiple dependent claims. The note following paragraph 1.16(d) is intended to clearly indicate that the applicant, attorney, or agent may pay any additional fees required under paragraphs (b), (c) and (d) of § 1.16, or cancel such claims without payment of such additional fees, either at the time of filing or by the time a response is due to any notice of fee deficiency mailed by the Office. If the fees are not paid or the claims cancelled by the end of the period set for response to the notice of fee deficiency, the application will be held abandoned. Paragraph 1.16(e) is reserved under this Alternative (Alternative A). New paragraph 1.16(f) provides for a filing fee of \$63.00 for a design application.

Paragraphs 1.16(g) and (h) establish the filing fees for plant and reissue applications.

Paragraphs 1.16(i) and (j) set forth the additional claim fees required in reissue applications based on claims in excess of those in the original patent.

New § 1.17 relates to patent application processing fees which are normally due during the time a patent application is pending. New paragraphs (a), (b), (c) and (d) provide for the payment of an extension fee for obtaining an automatic extension of time upon filing a petition as provided for in § 1.136(a). The extension fee can be paid during the period for which an extension of time to respond is desired, or after the original period for response has expired, provided that any maximum statutory period which may apply has not expired. The fees set forth in § 1.17 are the total fees required under § 1.136(a) for the periods indicated and any extension fee previously paid to

extend a particular period is credited toward the total extension fee required. Paragraph (e) sets forth the fee for filing a notice of appeal to the Board of Appeals. Paragraph (f) sets forth the fee for filing an appeal brief by appellant. Paragraph (g) provides for a new fee for requesting an oral hearing before the Board of Appeals. Paragraphs (h) and (i) set forth fees which will be required with petitions to the Commissioner under those sections of the regulations which specifically indicate that such petition fees are required. The amounts of the fees are set at two levels based on the degree of complexity of the petitions in order to recover the estimated average cost to the Office of processing the petitions. Paragraph (j) provides for a fee to be paid with any petition for institution of a public use proceeding to cover the estimated average cost of such a proceeding. Paragraph (k) sets forth a new fee for processing an application filed with a non-English language specification. The fee will cover the additional processing costs involved in such applications. New paragraph (l) incorporates into the regulations the fee which will be charged for filing a petition to revive or to accept late payment of the issue fee where the delay was unavoidable.

New §1.18 sets the amount of the issue fees pursuant to the authority contained in Public Law 96-517. New paragraph (a) establishes an issue fee of \$250.00 for all original and reissue patents except for designs and plants. New paragraph (b) sets the amount of the issue fee for a design patent at a uniform \$88.00 even though terms of 3½, 7, or 14 years may be requested. New paragraph (c) establishes the issue fee for a plant patent.

New §1.20 sets fees for various post-issuance functions performed by the Office. New paragraph (a) sets forth a fee for providing a certificate of correction of an applicant's mistake. New paragraph (b) sets a fee to accompany a petition to correct inventorship in a patent under §1.324. New paragraph (c) transfers the \$1,500.00 fee for requesting reexamination from present §1.21(x) to this new section. New paragraph (d) provides for a fee for filing a disclaimer under §1.321. Maintenance fees required by Public Law 96-517 are placed in this section. Specific maintenance fees, which are required by Public Law 96-517, for those patents resulting from applications filed on and after December 12, 1980 and up to the date of enactment of H.R. 6260 are established at this time in paragraphs 1.20(e)-(g). The fees in paragraph 1.20(e)-(g) are only set at one

level because they are established under Public Law 96-517 and are not subject to reduction for small entities, i.e., independent inventors, small business concerns, and nonprofit organizations. The details implementing the payment of maintenance fees are not being established at this time.

Section 1.137, as amended, designates the existing section as paragraph (a), adds a reference to the new fee under §1.17(l) for a petition for revival where the delay which resulted in abandonment was unavoidable, and states when the showing that the delay was unavoidable must be verified. Paragraph 1.137(b) is reserved under this Alternative (Alternative A). Paragraph (c) requires that any petition for revival under paragraphs (a) or (b) of §1.137 be promptly filed and that a terminal disclaimer, equivalent to the period of abandonment of the application, be filed with any petition filed more than six months after the date of abandonment.

Section 1.155 is amended to refer in paragraph (a) to §1.18(b) which sets forth the issue fee for a design application as being \$88.00. Paragraph 1.155(b), as amended, includes a reference to the fee for delayed payment of the issue fee set forth in §1.17(l) where the delay in payment was unavoidable and states when showings that the delay was unavoidable must be verified. Paragraph 1.155(c) is reserved under this Alternative (Alternative A). Paragraph 1.155(d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where any petition under this section is not filed within six months of the date of abandonment.

Section 1.316 is amended to clarify the language and to delete reference to the fee specified in the notice of allowance. Paragraph (b) is amended to provide for petitions for revival with the fee in proposed §1.17(l) where the delay in payment was unavoidable and to state when showings that the delay was unavoidable must be verified. Paragraph (c) is reserved under this Alternative (Alternative A). Paragraph (d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where any petition under this section is not filed within six months of the date of abandonment.

Section 1.317 is amended to implement the statutory provisions of 35 U.S.C. 41(a) with regard to petition fees for patents lapsed for failure to pay the remaining balance of the issue fee. Paragraph (a) is amended to show that it applies only to patents in which the issue fee was paid prior to October 1, 1982. Issue fees paid on or after that

date will be in accordance with §1.18. Paragraph (b) is amended to provide for petitions with the fee in §1.17(l) where the delay in payment was unavoidable and to state when showings that the delay was unavoidable must be verified. Paragraph (c) is reserved under this Alternative (Alternative A). Paragraph (d) is added to require a terminal disclaimer equivalent to the period of lapse of the patent where any petition under this section is not filed within six months of the date of lapse.

Alternative B—Rule Changes Under H.R. 6260

The following sections will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to that date:

Section 1.16 in Alternative B establishes in the regulations those statutory fees which would be charged by the Commissioner for filing patent applications under H.R. 6260. Section 1.16 also includes additional filing fees set in 35 U.S.C. 41(a)(1) to cover the cost of examining complexities presented by certain applications, e.g., applications containing more than a specified number of claims and any application containing a multiple dependent claim. Section 1.16 also provides that fees will be charged when the number of claims is increased above the specified number or when a multiple dependent claim is first presented, whether on filing or at a later point in processing.

Under 35 U.S.C. 41(a) as it would be amended by H.R. 6260, the filing fee for an original patent, except in design or plant cases, is \$300. In addition, on filing or on presentation at any other time, \$30 is due for each claim in independent form which is in excess of three, \$10 is due for each claim (whether independent or dependent) which is in excess of twenty, and \$100 is due for each application containing a multiple dependent claim. The latter fee is a one-time charge per application due the first time a multiple dependent claim is presented for examination. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of Title 35, United States Code, or any claim depending therefrom, is considered as separate dependent claims in accordance with the number of claims to which reference is made.

The fees in § 1.16 are reduced by 50 per centum for applications filed by small entities, i.e., independent inventors, nonprofit organizations and small business concerns, in accordance with H.R. 6260. Therefore, two fees are listed under each paragraph.

New § 1.16 relates to application filing fees. Paragraph (a) sets a basic filing fee of \$300 which will be required in all original patent applications. The term "original as used in the regulations means "non-reissue". An "original" application can be a first filing, a division, a continuation, or a continuation-in-part application. Paragraph 1.16(b) provides for an additional fee of \$30 for each independent claim in excess of 3 in an original application. New paragraph 1.16(c) provides for an additional fee of \$10 for each claim in excess of 20, whether independent or dependent. A multiple dependent claim is considered to be that number of claims to which direct reference is made. Also, any claim which refers to a multiple dependent claim is considered for fee calculation purposes to be the number of claims to which direct reference is made in the multiple dependent claim. Paragraph 1.16(d) provides for a new fee of \$100 in each application which contains one or more multiple dependent claims. The note following paragraph 1.16(d) is intended to clearly indicate that the applicant, attorney, or agent may pay any additional fees required under paragraphs (b), (c) and (d) of § 1.16, or cancel such claims without payment of such additional fees, either at the time of filing or by the time a response is due to any notice of fee deficiency mailed by the Office. If the fees are not paid or the claims canceled by the end of the period set for response to the notice of fee deficiency, the application will be held abandoned. New paragraph 1.16(e) establishes the amount of the surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application. This fee is being established at this time, but will only be made effective when the statutory authority for the late filing of the fee or the oath or declaration becomes effective under 35 U.S.C. 111, as it would be amended by H.R. 6260. New paragraph 1.16(f) provides for a filing fee of \$125.00 for a design application.

Paragraphs 1.16(g) and (h) incorporate into the regulations the filing fees for plant and reissue applications.

Paragraphs 1.16(i) and (j) set forth the additional claim fees required in reissue applications based on claims in excess of those in the original patent.

New § 1.17 relates to patent application processing fees which are normally due during the time a patent application is pending. New paragraphs (a), (b), (c) and (d) provide for the payment of an extension fee for obtaining an automatic extension of

time upon filing a petition as provided for in § 1.136(a). The extension fee can be paid during the period for which an extension of time to respond is desired, or after the original period for response has expired, provided that any maximum statutory period which may apply has not expired. The fees set forth in § 1.17 are the total fees required under § 1.136(a) for the periods indicated and any extension fee previously paid to extend a particular period is credited toward the total extension fee required. Paragraph (e) sets forth the fee for filing a notice of appeal to the Board of Appeals. Paragraph (f) sets forth the fee for filing an appeal brief by appellant. Paragraph (g) provides for a new fee for requesting an oral hearing before the Board of Appeals. Paragraphs (h) and (i) set forth fees which will be required with petitions to the Commissioner under those sections of the regulations which specifically indicate that such petition fees are required. The amounts of the fees are set at two levels based on the degree of complexity of the petitions in order to recover the estimated average cost to the Office of processing the petitions. Paragraph (j) provides for a fee to be paid with any petition for institution of a public use proceeding to cover the estimated average cost of such a proceeding. Paragraph (k) sets forth a new fee for processing an application filed with a non-English language specification. The fee will cover the additional processing costs involved in such applications. New paragraph (l) incorporates into the regulations the fee which will be charged for filing a petition to revive or to accept late payment of the issue fee where the delay was unavoidable. New paragraph (m) incorporates into the regulations the fee which will be established in 35 U.S.C. 41(a)7, as amended H.R. 6260, to be charged for a petition for the revival of an unintentionally abandoned application for patent or for the unintentionally delayed payment of an issue fee.

Since paragraphs 1.17(h), (i), (j) and (k) are established under the authority given the Commissioner under 35 U.S.C. 41(d) as it would be amended by H.R. 6260, only one level of fee is set. H.R. 6260 only provides for the reduction of fees charged to small entities of those fees established in 35 U.S.C. 41(a) and (b).

New § 1.18 sets the amount of the issue fees specified by H.R. 6260. New paragraph (a) establishes an issue fee of \$500.00 for all original and reissue patents except for designs and plants. New paragraph (b) sets the amount of

the issue fee for a design patent. New paragraph (c) sets forth the issue fee for a plant patent. All fees in § 1.18 will be reduced by 50 per centum for small entities.

New § 1.20 sets fees for various post-issuance functions performed by the Office. New paragraph (a) sets forth a fee for providing a certificate of correction of an applicant's mistake. New paragraph (b) sets a fee to accompany a petition to correct inventorship in a patent under § 1.324. New paragraph (c) transfers the \$1,500.00 fee for requesting reexamination from present § 1.21(x) to this new section. New paragraph (d) provides for a fee for filing a disclaimer under § 1.321. Maintenance fees required by Public Law 96-517 and which would be set in H.R. 6260 are placed in this section. Specific maintenance fees, which are required by Public Law 96-517, for those patents resulting from applications filed on and after December 12, 1980 and up to the date of enactment of H.R. 6260 are being established at this time in paragraphs 1.20(e)-(g). New paragraphs 1.20(h)-(j) incorporate into the regulations the maintenance fees which would be provided in 35 U.S.C. 41(b) by H.R. 6260. The fees in paragraphs 1.20(a)-(c) are only set at one level because they are established under 35 U.S.C. 41(d). The fees in paragraphs 1.20(e)-(g) are only set at one level because they are established under Public Law 96-517 and are not subject to reduction for small entities. The details implementing the payment of maintenance fees are not being established at this time.

Section 1.66 is amended to provide for the use of an apostille of a foreign official to attest to oaths or affirmations made in foreign countries in accordance with 35 U.S.C. 115 and 261, as amended by H.R. 6260.

Section 1.137, as amended, designates the existing section as part of paragraph (a), adds a reference to the new fee under § 1.17(l) for a petition for revival where the delay which resulted in abandonment was unavoidable, indicates that the petition must be promptly filed, and states when the showing that the delay was unavoidable must be verified. New paragraph 1.137(b) provides for filing a statement and a fee under § 1.17(m) for revival of an application which was unintentionally abandoned, and also indicates when such petitions can be filed. Paragraph (c) requires that any petition for revival under paragraph (a) of § 1.137 be promptly filed and that a terminal disclaimer, equivalent to the period of abandonment of the

application, be filed with any petition under paragraph (a) filed more than six months after the date of abandonment.

Section 1.155 is amended to refer in paragraph (a) to § 1.18(b) which sets forth the issue fee for a design application. Paragraph 1.155(b), as amended, includes a reference to the fee for delayed payment of the issue fee set forth in § 1.17(l) where the delay in payment was unavoidable, indicates that the petition must be promptly filed, and states when showings that the delay was unavoidable must be verified. New paragraph 1.155(c) provides for acceptance of the late payment of the issue fee where the delay was unintentional upon petition and payment of the fee set forth in § 1.17(m). New paragraph 1.155(d) also indicates when such petitions can be filed. Paragraph 1.155(e) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where petition under paragraph (b) of § 1.155 is not filed within six months of the date of abandonment.

Section 1.316 is amended to implement the statutory provisions of 35 U.S.C. 41(a) with regard to petition fees for revival of applications abandoned for failure to pay the issue fee. Paragraph (b) is amended to provide for petitions for revival with the fee in § 1.17(l) where the delay in payment was unavoidable, to indicate that the petition must be promptly filed, and to state when showings that the delay was unavoidable must be verified. Paragraph (c) is added to provide for petitions for revival with the fee in § 1.17(m) where the delay was unintentional. New paragraph (c) also indicates when such petitions can be filed. Paragraph (d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where a petition under paragraph (b) of § 1.316 is not filed within six months of the date of abandonment.

Section 1.317 is amended to implement the statutory provisions of 35 U.S.C. 41(a) with regard to petition fees for patents lapsed for failure to pay the remaining balance of the issue fee. Paragraph (a) is amended to show that it applies only to patents in which the issue fee was paid prior to October 1, 1982. Issue fees paid on or after that date will be in accordance with § 1.18. Paragraph (b) is amended to provide for petitions with the fee in § 1.17(l) where the delay in payment was unavoidable, to indicate that the petition must be promptly filed, and to state when showings that the delay was unavoidable must be verified. Paragraph

(c) is added to provide for petitions with the fee in § 1.17(m) where the delay was unintentional. New paragraph (c) also indicates when such petitions can be filed. Paragraph (d) is added to require a terminal disclaimer equivalent to the period of lapse of the patent where a petition under paragraph (b) of § 1.317 is not filed within six months of the date of lapse.

Response to Comments on the Rules

Specific comments were received on a number of the sections. All of the comments, including the written comments and the oral testimony, were considered in adopting the changes set forth herein.

Written comments were received from three patent law groups and eleven individuals. The three patent law groups were (1) the American Patent Law Association whose membership includes several thousand lawyers involved in the practice of law before the U.S. Patent and Trademark Office; (2) the Patent, Trademark and Copyright Section of the Virginia State Bar; and (3) the Patent, Trademark and Copyright Law Section of the Bar Association of the District of Columbia.

Oral comments were presented at the hearing on behalf of two patent law groups and by 3 individuals on their own behalf.

These comments appear below along with responses thereto.

Comments received relating to §§ 1.9, 1.27 and 1.28 and the forms of Part 3 are not discussed in substance in this rule change since additional time for submitting written comments is provided until August 13, 1982. All comments presented to these rules will be discussed in a later rule promulgation.

Comment: One person argued that it is unreasonable to require fees to lengthen a shortened statutory period.

Reply: A shortened statutory time is provided for by statute. The shortened period helps reduce patent pendency time and speed the disclosure of technology and information about patent rights. Many applicants can reply within the present three month shortened period which has been in effect for over fifteen years. The fee for extending the time provides a positive method for applicants to obtain an extension of time while still expediting the prosecution of their applications.

Comment: Another person commented that H.R. 6260 should be rejected in that the fee levels are too high.

Reply: The consideration of the merits of H.R. 6260 is not before the Office in this rule change.

Comment: Three patent bar groups and two individuals presented comments relating to the effect of the new extension of time fees in § 1.17 and the effect thereof on the current practice of granting an automatic one-month extension of time if a timely first response to a final rejection is filed by the applicant.

Reply: The Office plans to terminate the automatic one-month extension of time practice on October 1, 1982. It is felt that the extensions of time which are readily available under §§ 1.17 and 1.136 will meet the needs of applicants. The amount of the fees required to obtain an extension will be the same for periods of response before and after final rejection.

Comment: One suggestion was made to permit the filing of an appeal without the appeal fee where the office has not acted on a timely response after final rejection by applicant.

Reply: Such a procedure is not possible under the provisions of H.R. 6260 since it calls for the appeal fee "On filing an appeal" in § 41(a)(6).

Comment: Two comments were received requesting that the rules be changed to make the due date for paying the fee for an oral hearing on appeal after the examiner's answer on appeal.

Reply: A change in the rules has been made to provide that the fee for an oral hearing is due no later than one month after the date of mailing of the examiner's answer.

Comment: Two comments were received requesting that no charge for revival of an abandoned application be made where the abandonment resulted from the non-receipt of an Office action by the applicant.

Reply: It is present Office practice to remail any Office action which is not received at applicant's correspondence address and start anew the response period. This procedure will continue in the future under the revised rules.

Comment: Three patent bar groups and two individuals indicated that the proposed deletion of the refund provisions due to PCT search reports in § 1.26(b) and § 1.446(b) would make the cost of filing under the Patent Cooperation Treaty prohibitively high and does not recognize the benefit of an earlier search on a corresponding application.

Reply: In view of these comments, proposed § 1.445(a)(2) and (4) and § 1.446(b) have been amended to provide a credit of \$250 where there is a corresponding application.

Comment: One individual requested that the multiple dependent claim practice set forth in § 1.75(c) be changed

to permit one multiple dependent claim to refer to another multiple dependent claim as permitted under European practice.

Reply: This suggestion cannot be adopted since it is contrary to 35 U.S.C. 112 and cannot therefore be changed by rule.

Comment: One suggestion was made to change "official" to "Office" in § 1.135(b).

Reply: The suggestion has been adopted.

Comment: One suggestion was made to allow refund of the oral hearing fee if an oral hearing is not held.

Reply: This suggestion was not adopted since such refund is not appropriate in view of the fact that the fee is stated to be "for requesting an oral hearing" and not the actual conduct thereof.

Comment: Three patent bar groups raised the question as to whether an applicant would be permitted to revive an unintentionally abandoned application under § 1.137(b) after having been unsuccessful in the unavoidable approach under § 1.137(a) and suggested that this be made clear when the proposed rules are promulgated.

Reply: Yes, an applicant under certain conditions could use § 1.137(b) after having been unsuccessful in the unavoidable approach under § 1.137(a).

Comment: Several comments related to the possibility of reviving applications unintentionally abandoned up to 15 years ago.

Reply: In view of the comments received, § 1.137(b) is being implemented to provide only for the revival of applications which were unintentionally abandoned for a reasonable but limited period of time. This should create no substantial problems in regard to intervening rights situations. It would permit some greater flexibility than that originally proposed but should have no significant effect on the current case backlog, pendency or number of interferences pending.

Comment: One comment was received pointing out that the availability of an "unintentional abandonment" revival under § 1.137(b) should not result in stricter holdings in "unavoidable abandonment" revival petitions under § 1.137(a).

Reply: The Office plans to continue to use the current criteria used to decide petitions to revive applications unavoidably abandoned.

Comment: One written comment questioned whether the Commissioner has statutory authority to revive unintentionally abandoned applications.

Reply: If Congress did not intend the Commissioner to have such authority

there would have been no reason to establish fees in Section 41(a) 7 in H.R. 6260. The legislative history of H.R. 6260, House Report No. 97-542 (Committee on the Judiciary), also makes the Congressional intent clear. The provisions in H.R. 6260 relating to unintentional abandonment are substantive in addition to setting the fee.

Comment: One letter questioned what is intended by the statement in § 1.137(b) that the Commissioner may require additional information where there is a question whether the abandonment was unintentional.

Reply: Additional information would be required only where there is an indication that the abandonment was intentional, for example, where an express abandonment has been filed. The record should be clear how such an express abandonment was unintentional if the petition is to be granted.

Comment: One comment raised the question as to whether in a petition to revive on grounds that the delay was unavoidable under § 1.137(a), it would be sufficient that a registered attorney's statement be submitted which merely recites facts as related to him or her by another.

Reply: Statements must be made, where possible, by the person having direct personal knowledge of the facts. No change in the "showing" required or the persons making them is intended in such petitions. The rule merely clarifies that a statement by a registered attorney or agent need not be in the form of an oath or declaration.

Comment: One comment suggested that § 1.317 be changed to provide for the situation where there was a lapse in a patent due to the unintentional delay in paying a balance of issue fee due.

Reply: Section 1.317 has now been changed to provide for this lapse situation.

Comment: Three patent bar groups and one individual indicated that a full credit of the amount equal to the international search fee be made where both a U.S. national and international search are made by the United States Patent and Trademark Office.

Reply: While a complete credit is not considered proper in view of additional processing work (including searching) required in the second application, a credit of \$250 has been provided in revising § 1.445(a) (2) and (4).

Comment: One person commented that the term "patent" should be inserted after "abandoned" in § 1.12(b).

Reply: The suggestion has been adopted.

Discussion of Significant Differences Between Proposed and Final Rules

A number of other changes which have been made as a result of the comments received and further review of the proposed rulemaking are identified below.

Implementation of the changes to § 1.9, new §§ 1.27 and 1.28, and the deletion of Part 3 are being deferred for further comments by August 13, 1982. See the discussion below.

Subparagraph (a)(5) of § 1.19 has been changed from that proposed by referring to subparagraphs (1) through (4) rather than (3) and (4) in order to clarify that copies of patents cannot be ordered at the rate set in subparagraph (a)(5). Instead, copies of patents must be ordered under paragraphs (a) (1) and (2) of § 1.19.

Section 1.24 has been changed from that proposed to provide for the sale of 40-cent coupons. Coupons in this denomination may be useful in view of the charge of forty cents for a printed copy of a registered mark in § 2.6(m) of Alternative A of the trademark rules.

Sections 1.137, 1.155 and 1.316 have been changed from that proposed in Alternative B to further specify the conditions under which unintentionally abandoned applications can be revived.

Sections 1.192 and 1.194 have been changed from that proposed so as to allow a request for an oral hearing and the payment of the required fee therefor to be made one month after the date of the examiner's answer. Previously, appellant was required to indicate a desire for an oral hearing at the time of filing the brief. The sections will now permit appellant to consider the examiner's answer before deciding whether to request an oral hearing and pay the required fee.

Section 1.317 has been changed in Alternative B to provide for the situation where there was a lapse in a patent due to the unintentional delay in paying a balance of issue fee due.

Section 1.445(a) (2) and (4) have been changed from that proposed to provide for a reduction in the international search fee where there have been a corresponding United States national application and a credit to the national fee where an international search fee has been paid in a corresponding international application and the international search has been made by the United States Patent and Trademark Office.

Section 1.446(b) has been changed from that proposed to permit a refund of a portion of the search fee to the extent set forth in § 1.445(a)(4), if such refund is

requested at the time of paying the national fee.

Implementation of Patent Fee Revision

The effective date of the patent fee revisions contained in this rulemaking is October 1, 1982. The changes which will become effective on October 1, 1982, under Public Law 96-517 (without enactment of H.R. 6260) are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under only Public Law 96-517, which appear in Alternative A. The changes which will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under H.R. 6260, which appear in Alternative B. The rule changes common to Public Law 96-517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law prior to October 1, 1982. The rule changes in Alternative A will become effective on October 1, 1982, unless H.R. 6260 is enacted as a Public Law prior to October 1, 1982. If Alternative A becomes effective on October 1, 1982, the rule changes in Alternative B will not become effective on October 1, 1982. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, the rule changes in Alternative B will become effective on October 1, 1982, in which case the rule changes in Alternative A will not become effective on October 1, 1982.

Any fee which is due and payable on or after October 1, 1982, must be paid in the amount and in accordance with the procedures contained in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing under § 1.8 will be considered to be the date of receipt in the Office. In order to ensure clarity in the implementation a discussion of the implementation of specific sections is set forth below:

Implementation of Specific Sections

The various sections will be implemented in the manner set forth below:

§ 1.6 National application filing fees.

Any national patent application filing fees paid on or after October 1, 1982, must be paid in the amounts set forth in this section. Any additional fees which become due under § 1.16 in pending applications on or after October 1, 1982, or which have not been paid prior to October 1, 1982, must be paid in the amounts set forth in this section even

though the application was filed prior to October 1, 1982. For example, if an application filed prior to October 1, 1982, is amended on or after October 1, 1982, to include a multiple dependent claim for the first time, the fee set forth in § 1.16(d) must be paid.

The surcharge in § 1.16(e) of Alternative B is being established at this time, but will only be made effective when the statutory authority for the late filing of the fee or the oath or declaration becomes effective under 35 U.S.C. 111, as it would be amended by H.R. 6260. The statutory authority for the late filing of the fee or the oath or declaration becomes effective six months after enactment of H.R. 6260 as a Public Law.

§ 1.17 Patent application processing fees.

Any patent application processing fees paid on or after October 1, 1982, must be paid in the amounts set forth in this section.

The extension fees which must accompany a petition for an extension of time become effective on October 1, 1982, and apply to any application for which the period for responding, i.e., taking action, expires on October 1, 1982, or thereafter. If a response or action by the applicant was due before October 1, 1982, and was not filed timely or an extension of time until October 1, 1982, or thereafter, was not obtained, then § 1.136(a) cannot be used to obtain an extension. *Any response or action required before October 1, 1982, cannot have its time extended by using § 1.136(a).* If one or more previous extensions have been granted prior to October 1, 1982, extending the time for taking action until October 1, 1982, or thereafter, the fees which are due for additional extensions under § 1.136(a) will be as set forth in § 1.17(a)-(d) under either Alternative A or B. For example, under Alternative A, if a first one-month extension has been granted prior to October 1, 1982 extending the time for taking action to October 15, 1982, a date on or after October 1, 1982, response within one month after the October 15 date to which the time for taking action has been extended would require a second month extension fee of \$100. The \$50 fee for the extension of the first month to October 15, 1982, would not be required since it had been granted before October 1, 1982. Response within two months after the October 15 date to which the time for taking action has been extended would require a \$300 fee. Similarly, response within three months after the October 15 date to which the time for taking action has been extended would require a \$500 fee. However, in no

case may an applicant respond later than the maximum time period set by statute.

Other examples of the fees to be charged under Alternative A are contained in the following table:

Number of extensions prior to Oct. 1, 1982	Total fee for response after date to which time for taking action has been extended as of Oct. 1, 1982		
	Within		
	1st month	2d month	3d month
1.....	\$100	\$300	\$500
2.....	200	400	(¹)
3.....	200	(¹)	(¹)

¹ If extensions for four months have previously been granted, no additional extensions are possible under § 1.136(a) but may be available under § 1.136(b) in certain limited situations.

The previous practice of extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection is being discontinued effective with any first response to a final rejection filed on or after October 1, 1982. Applicants can obtain additional time for response after that date by paying the appropriate fee for the same. An object of the previous practice, as expressed in § 714.13 of the Manual of Patent Examining Procedure, was to obviate the necessity for appeal or filing a continuing application merely to gain time to consider the examiner's position in reply to a response timely filed after final rejection. Under § 1.136(a) the object of the previous practice can be achieved without continuing the previous practice. Thus, under § 1.136(a) an applicant can file a timely first response to a final rejection within the initial period without having to file an appeal or a continuing application if the examiner's response is not received prior to the expiration of the initial period for response. If the timely first response places the application in condition for allowance no additional response and no extension fee from applicant is required. If the examiner's advisory action indicates the timely first response did not place the application in condition for allowance the applicant may then consider the examiner's position to determine whether further prosecution is desirable. If further prosecution is not desired the application can be abandoned without further response or expense. If further prosecution is desired, the applicant can petition and pay the necessary fee to extend the time to the extent appropriate up to the maximum permitted by statute. The availability of

this flexibility under § 1.136(a) eliminates the necessity for the previous practice. Further, under H.R. 6260 extensions of time would be granted in most instances by virtue of the payment of fees rather than without fees as in the previous practice. The elimination of the previous practice after final rejection is thus consistent with the letter and spirit of H.R. 6260.

After an applicant has petitioned and paid the extension fees of \$550 for response within the fourth month pursuant to § 1.136(a), any further extensions which are permitted under the statute must be obtained under § 1.136(b).

A petition for extension of time under § 1.136(a) may incorporate by reference a previously filed response without including an additional copy of the response in circumstances where the response was received late and the petition is filed to extend the time so that the response will be considered timely.

The appeal fees set forth in § 1.17(e)-(g) are due for notices of appeal or briefs filed, or requests for oral hearings filed, on or after October 1, 1982. If more than one appeal occurs in an application, the fees are due for each notice of appeal, each brief, and each request filed for an oral hearing as long as a decision on the merits by the Board of Appeals resulted from the first notice of appeal, brief, and request for an oral hearing. If the examiner reopens prosecution in the application after appeal and prior to the decision by the Board of Appeals then the fee for the notice of appeal, brief, and request for an oral hearing will apply to a later appeal which does result in a decision by the Board of Appeals. No refund of any appeal fees is permitted since such are due on filing or on requesting an oral hearing. No fee is required for a reply brief.

The fees for petitions set forth in § 1.17(h)-(j) and (l) apply to any such petition filed on or after October 1, 1982. The fee set forth in § 1.17(m) of Alternative B would apply, with enactment of H.R. 6260 prior to October 1, 1982, to petitions (1) for revival of an unintentionally abandoned application or (2) for the unintentionally delayed payment of the fee for issuing a patent. Section 1.137(b) of Alternative B would apply to applications unintentionally abandoned by failure to prosecute, e.g., failure to respond to an Office action. Sections 1.155(c) and 1.316(c) of Alternative B would apply to applications in which the payment of the fee for issuing a patent is unintentionally delayed. These sections would be implemented, with enactment of H.R. 6260 prior to October 1, 1982, by

making them effective as to any applications which would be covered by the literal language of the sections. In addition, and for a transition period between October 1, 1982, and December 31, 1982, a petition to revive an unintentionally abandoned application would be granted if (i) the application received a decision on a petition to revive the application on or after October 1, 1981, and before July 30, 1982, or (ii) a petition was filed or renewed on or after October 1, 1981, and before July 30, 1982, provided in the case of both (i) and (ii) that a petition to revive was filed within one year of the date of abandonment. The dates in question were chosen so as to permit this remedial provision to be given as wide an application as possible to benefit applicants whose applications have previously been unintentionally abandoned, but who could not meet the previous requirements for a showing that the delay resulting in the abandonment was unavoidable. The dates were also chosen to prevent an applicant whose application has been abandoned for an unduly long period from attempting to take advantage of this new provision, possibly to the detriment of individuals or companies who had begun to make, use, or sell the subject matter of the application after the date of abandonment of the application. By using these dates the possibility of reviving the application of an applicant who has, in effect, abandoned the invention under 35 U.S.C. 102(c) is minimized. Implementing these sections in the manner set forth would be appropriate and proper in view of the legislative history of H.R. 6260, contained in House Report No. 97-542 (Committee on the Judiciary), which indicates that the Commissioner can establish time limits within which petitions to revive or to accept late payment of issue fees can be filed. Thus, it is entirely proper to limit such petitions in the manner set forth in order to prevent abuses from occurring. To ensure that abuses do not occur, §§ 1.137(b), 1.155(c), 1.316(c), and 1.317(c) specifically indicate that waivers of the time periods involved will not be considered via petitions under § 1.183.

The fee set forth in § 1.17(k) is required for any application filed on or after October 1, 1982, with a specification in a non-English language.

§ 1.18 Patent issue fees.

Any patent issue fee paid on or after October 1, 1982, must be paid in the amounts set forth in this section even if the notice of allowance was mailed prior to October 1, 1982, and indicates

different amounts due. If the issue fee is paid prior to October 1, 1982, any balance of issue fee due must be paid in accordance with § 1.317.

§ 1.19 Document supply fees.

The document supply fees set forth in this section will apply to all orders and requests received by the Patent and Trademark Office on or after October 1, 1982.

§ 1.20 Post-issuance fees.

The post-issuance fees set forth in § 1.20(a)-(d) apply to any petitions, requests, or actions filed on or after October 1, 1982. The amounts of the maintenance fees are included in § 1.20.

Maintenance fees will be required for any patent actually applied for on or after December 12, 1980, whether or not the patent is entitled to the benefit of an earlier filing date under 35 U.S.C. 120 or a right of priority under 35 U.S.C. 119. For reissue patents, the controlling date would be the filing date of the original patent. For example, maintenance fees would only be required where the application for the original patent was filed on or after December 12, 1980. As to patents resulting from international applications filed under the Patent Cooperation Treaty, maintenance fees will be required on all patents resulting from international applications having PCT filing dates on or after December 12, 1980.

The details implementing payment of the maintenance fees are not being established at this time since such fees will not be due for some time and additional consideration of the problems thereof is required.

§ 1.21 Miscellaneous fees and charges.

The miscellaneous fees and charges set forth in this section will apply to all orders and requests received by the Patent and Trademark Office on or after October 1, 1982.

§ 1.445 International application filing and processing fees.

Any international application filing and processing fees paid on or after October 1, 1982, must be paid in the amounts set forth in this section.

Implementation Of Certain Sections Deferred For Further Comments

In view of the comments and the recommendations received at the hearing on July 9, 1982, the period for written comments on § 1.9(c), (d), (e), and (f), and on §§ 1.27 and 1.28, has been extended until August 13, 1982, (see 47 FR 32458, July 27, 1982).

Comments received at the hearing on July 9, 1982, expressed the view that there is no necessity to publish final rules on § 1.9(c), (d), (e), and (f), and on §§ 1.27 and 1.28, by August 2, 1982, and that further time for consideration and comment was necessary. Persons commenting stated a belief that the pressure of time does not apply to §§ 1.27 and 1.28 as it does apply to the fee rulemaking. Accordingly, the period for written comments on these sections is extended until August 13, 1982. After receiving written comments by August 13, 1982, the changes to § 1.9 and proposed §§ 1.27 and 1.28 will be adopted as final rules with such modifications as are found to be appropriate after review of the comments. These rule changes, with any appropriate modifications thereof, must become effective on October 1, 1982, with enactment of H.R. 6260 prior to October 1, 1982. Accordingly, adoption of the changes to § 1.9 and new §§ 1.27 and 1.28 is being deferred at this time to permit additional written comments by August 13, 1982. However, these rule changes will be adopted, with any appropriate modifications, as soon as possible after receipt of the additional written comments. No additional proposal will be published and no additional hearing will be held prior to adoption of final rules on the changes to § 1.9 and on new §§ 1.27 and 1.28.

As a result of additional comments presented during the hearing on the proposed trademark fees, the period for written comments on the deletion of Part 3 was also extended until August 13, 1982, to provide an additional opportunity for interested persons to comment on this proposed change. Since it is not essential that this deletion be published by August 2, 1982, it is appropriate to extend the period for comments. No additional proposal will be published and no additional hearing will be held prior to a decision on whether or not to delete Part 3 as proposed.

Section II—Revision of Trademark Fees

Background: A notice of proposed rulemaking was published in the *Federal Register* on June 28, 1982, at 47 FR 28063-28065 and in the *Official Gazette* on June 29, 1982, at 1019 TMOG 110-119. An oral hearing was held on July 9, 1982. Three written letters and statements were submitted. Three persons testified at the oral hearing. Full consideration has been given to all of the letters, statements, and testimony.

Objectives of Rule Changes: These amendments establish fees for the filing and processing of an application for the registration of a trademark or other

mark, and for providing all other services and materials relating to trademarks and other marks.

Public Law 96-517

Public Law 96-517 authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for providing all other services and materials relating to trademarks and other marks. Public Law 96-517 requires that by October 1, 1982, fees for the filing and processing of an application for the registration of a trademark or other mark be set to recover in the aggregate 50 percent of the estimated average cost to the Office of such processing. Also by October 1, 1982, fees for providing all other services and materials relating to trademarks and other marks are to be set to recover the estimated average cost to the Office of performing the service or furnishing the material.

H.R. 6260

On June 8, 1982, the House of Representatives passed H.R. 6260. This bill would amend the fee provisions to be implemented on October 1, 1982. H.R. 6260 would repeal the provisions in Public Law 96-517 requiring that filing and processing fees be set to recover in the aggregate 50 percent of the estimated average cost of such processing to the Office, and that fees for providing all other services and materials relating to trademarks and other marks be set to recover the estimated average cost to the Office of performing the service or furnishing the material. In passing H.R. 6260, the House of Representatives recommended a fee schedule to the Commissioner for fiscal year 1983. The fees set in Alternative B adopt the House recommendation.

This rule change, therefore, is also designed in the alternative to implement the fee provisions as they would be amended by H.R. 6260. The rule change contains changes which are common to Public Law 96-517 and H.R. 6260, as well as alternative rule changes which are specific to Public Law 96-517 (Alternative A) and to H.R. 6260 (Alternative B).

Discussion of Significant Changes

This rulemaking places into the appropriate sections of Title 37, Code of Federal Regulations, the various fees which are due on filing, during the pendency of a trademark application, or during the life of a registration.

Rule changes for implementing provisions of Public Law 96-517 or H.R. 6260 other than the fee provisions have not been included. Rule changes for

implementing provisions other than the fee provisions will be published in a later rulemaking proposal.

Discussion of Specific Sections Changed

The sections changed are grouped in this document under three different categories. Those changes which are common to Public Law 96-517 and H.R. 6260 appear first and are numbered 72-76.

The change which relates only to Public Law 96-517 appears as Alternative A and is numbered 77. The change which is dependent upon enactment of H.R. 6260 appears as Alternative B and is numbered 78. The changes common to Public Law 96-517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law. The changes contained in Alternative A will become effective on October 1, 1982, if H.R. 6260 does not become a Public Law prior to that date. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, Alternative B will become effective on October 1, 1982, in which case Alternative A will not become effective.

The specific rules for which changes are made are §§ 2.6, 2.85, 2.101, 2.146, 2.162 and 2.167.

Rule Changes Common to Public Law 96-517 and H.R. 6260

Section 2.85, paragraph (e), is amended to delete reference to late filed fees for oppositions and affidavits. The manner in which such fees shall be handled is described in the pertinent sections for affidavits and oppositions.

Section 2.101, paragraph (c), is amended to delete the reference to a service charge which will no longer be charged for late-filed fees for oppositions.

Section 2.146, paragraph (b), is amended to add a fee for filing a petition to the Commissioner. Paragraph (f) of this section which indicates that no fee is required is deleted.

Section 2.162, paragraph (d), is amended to remove the reference to a service charge for late-filed fees on section 8 affidavits.

Section 2.167, paragraph (g), is added to establish procedures relating to the fee for affidavits under section 15, 15 U.S.C. 1065, and to state the Office's action when no fee or an insufficient fee is filed.

Alternative A—Rule Change Only Under Public Law 96-517

Section 2.6 is revised to establish the fees authorized by Public Law 96-517 for filing and processing applications for the

registration of trademarks or other marks and for providing services and materials relating to trademarks or other marks.

Alternative B—Rule Change Only Under H.R. 6260

Section 2.6 is revised to establish the fees recommended by the House of Representatives under H.R. 6260 for filing and processing applications for the registration of trademarks or other marks and for providing services and materials relating to trademarks or other marks. The \$10 fee recommended by the House for certified copies appears in paragraphs (n) and (o) as a fee of \$6.50 for a copy of a registered mark showing title and/or status and a fee of \$3.50 for certification.

Response to Comments on the Rules

Specific comments were received on several of the sections. All of the comments included in the written submissions and the oral testimony were considered in adopting the changes set forth herein.

Written comments were received from three individuals. Oral comments were presented at the hearing on behalf of a patent and trademark law group, the American Patent Law Association, and an organization of trademark owners and lawyers, the United States Trademark Association. One individual spoke on behalf of a law firm and expanded upon the points raised in his previously submitted written comments.

These comments appear below along with responses thereto, where appropriate.

Comment: The representative of the trademark association spoke favorably about the proposal presented. The organization opposed 100% recovery of trademark costs from user fees. It was felt that such an approach reflected a misconception that trademarks benefit only their owners and not consumers and the economy as a whole. The speaker solicited the assistance of the Patent and Trademark Office in altering this viewpoint.

Comment: The representative of the bar group questioned the fairness of the Office in establishing the fees under Alternative B. It appeared that the Office had accepted the USTA proposals only where they were higher. In all cases where the USTA recommendations were lower than those proposed, the difference was split. The filing fee was singled out as the most unfair fee.

Reply: In Alternative B, the rules adopt the fee levels recommended by the House Committee on the Judiciary in House Report No. 97-542. The Report

recognizes that the Office needs to recover a certain amount of fee income over the next three years. The application filing fee is expected to furnish more than 60% of the estimated annual income. It could not be reduced further without endangering operations. The reduction from \$200.00 to \$175.00 per class was covered to a large extent by higher fees for other services.

Comment: The philosophy of H.R. 6260 is to recover no more than 100%. Final fees should recover this level and no more.

Reply: Projecting processing costs three years in advance can never be absolutely accurate. The Office must have sufficient funds to process anticipated workloads under the fees set during fiscal years 1983-1985 when costs are expected to be somewhat higher than present costs.

Comment: One suggestion involved retaining Part 4 of 37 CFR, at least for the present. Occasional users of the registration system find it to be a readily available reference. Certain information in the forms is available from no other source. The speaker believed the time pressures to implement the fee changes precluded proper consideration of the merits of Part 4.

Reply: The period for comment on deletion of Part 4 has been extended to August 13, 1982 to allow for additional public comment and internal consideration.

Comment: The suggestion was made that references to affidavits and oppositions should be eliminated from § 2.85(e) as the handling of late filed fees for these items is already covered directly in §§ 2.101(c), 2.162(d) and 2.167(g).

Reply: This suggestion was implemented.

Comment: A suggestion was made that §§ 2.101(c), 2.162(d) and 2.167(g) dealing with oppositions and affidavits under Section 8 and Section 15 be amended to require payment of all late filed fees within the time period specified in the notification by the Office.

Reply: All of the sections state that the affidavit or opposition "will not be refused if the required fee(s) * * * are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office." This language is considered sufficient to require payment of all fees or have the opposition, affidavit or declaration refused.

Comment: One suggestion was made to either cite § 2.6 in all sections being changed relative to fees or to cite it in none.

Reply: Citations of § 2.6 have been added to § 2.101(c) and § 2.146(b) to conform to § 2.162(d) and § 2.167(g).

Comment: It was suggested that the fee for a combined section 8 and 15 affidavit needed to be specified in the rules.

Reply: Section 2.6 has been changed to provide this combined fee

Discussion of Significant Differences Between Proposed and Final Rules

A number of changes which were made as a result of the comments received and further review of the proposed rulemaking are identified below.

Deletion of Part 4 has been deferred for further comments by August 13, 1982 (see 47 FR 32458, July 27, 1982). As elimination of Part 4 is not essential to the setting of fees, and does not have to be in place 60 days before implementation, it was decided to ask for further public comment.

Section 2.85(e) has been revised to eliminate the references to oppositions and affidavits. Because the handling of late filed fees for these items is specified elsewhere, these references in § 2.85(e) were redundant and confusing.

Both alternatives of § 2.6 have been revised to add a fee for a combined affidavit under sections 8 and 15 of the Act. In order to prevent possible confusion by users of the Trademark system, it was included separately.

Implementation of Trademark Fee Revision

The effective date of the trademark fee revisions contained in this rulemaking is October 1, 1982. The changes which will become effective on October 1, 1982, under Public Law 96-517 (without enactment of H.R. 6260) are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under only Public Law 96-517, which appear in Alternative A. The changes which will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under H.R. 6260, which appear in Alternative B. The rule changes common to Public Law 96-517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law prior to October 1, 1982. The rule changes in Alternative A will become effective on October 1, 1982, unless H.R. 6260 is enacted as a Public Law prior to October 1, 1982. If Alternative A becomes effective on October 1, 1982, the rule changes in Alternative B will

not become effective on October 1, 1982. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, the rule changes in Alternative B will become effective on October 1, 1982, in which case the rule changes in Alternative A will not become effective on October 1, 1982.

Any fee which is due and payable on or after October 1, 1982, must be paid in the amount and in accordance with the procedures contained in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing under § 1.8 will be considered to be the date of receipt in the Office. In order to ensure clarity in the implementation a discussion of the implementation of Section 2.6 is set forth below:

Implementation of Section 2.6

Fees set forth in § 2.6 must be paid in the amounts set forth in this section on or after October 1, 1982. Any additional fees which become due under § 2.6 in pending applications on or after October 1, 1982, or which have not been paid prior to October 1, 1982, must be paid in the amounts set forth in this section even though the application was filed prior to October 1, 1982. For example, if an application filed prior to October 1, 1982, is amended on or after October 1, 1982, to include additional classes, the fee set forth in § 2.6(a) must be paid per class added.

Implementation of Certain Sections Deferred for Further Comments

As a result of additional comments presented during the hearing on the proposed trademark fees, the period for written comments on the deletion of Part 4 has also been extended until August 13, 1982, to provide an additional opportunity for interested persons to comment on this proposed change (see 47 FR 32458, July 27, 1982). Since it is not essential that this deletion be published by August 2, 1982, it is appropriate to extend the period for comments. No additional proposal will be published and no additional hearing will be held prior to a decision on whether or not to delete Part 4 as proposed.

Other Considerations Relating to Patent and Trademark Fee Revisions

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

This rule change is in conformity with the requirements of the Regulatory Flexibility Act (Public Law 96-354), Executive Order 12291, and the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) for several reasons. Public Law 96-517 and H.R. 6260 have both taken into consideration the impact they may have on small entities. The fees under Public Law 96-517 are set to recover 50% of patent and trademark processing costs rather than full costs and generally the rate of increase in the fees is less than that of inflation since the last increase in fees in 1965. Further, the rules implementing Public Law 96-517 take into consideration small entities by setting a lower patent filing fee than issue fee to recover the required level of patent processing costs. The lower filing fee permits a small entity to file a patent application for a relatively low cost and not have to pay the higher balance of fees required to achieve Public Law 96-517 recovery levels until examination is complete and it is known that a patent will issue. Under H.R. 6260 and this rulemaking, small entities would be able to pay reduced fees for filing patent applications and for the issuance and maintenance in force of patents. In general, the rule change will also expedite proceedings before the Patent and Trademark Office, changing existing procedures where they can be simplified.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no significant additional record keeping or reporting requirements are placed upon the public. In fact, some paperwork, especially that related to requests for extensions of time, will be reduced.

List of Subjects in 37 CFR Parts 1 and 2

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Nonprofit organizations, Small businesses, Trademarks.

Amendment of Regulations

For the reasons indicated above and pursuant to the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, and under Sections 31 and 41 of the Trademark Act of July 5, 1946, 15 U.S.C. 1113, and 1123, Parts 1 and 2 of Title 37, Code of Federal Regulations, are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

The table of contents for Part 1 is amended as follows:

Fees and Payments of Money

- 1.16 National application filing fees.
- 1.17 Patent application processing fees.
- 1.18 Patent issue fees.
- 1.19 Document supply fees.
- 1.20 Post-issuance fees.
- 1.21 Miscellaneous fees and charges.

* * * * *

Time for Response by Applicant; Abandonment of Application

- 1.134 Time period for response to an Office action.

* * * * *

Interferences: Termination

* * * * *

- 1.268 Filing of interference settlement agreements.

SECTION I—REVISION OF PATENT FEES

Rule Changes Common to Public Law 96-517 and H.R. 6260

1. Section 1.11 is amended by revising paragraph (c) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(c) All requests for reexamination for which the fee under § 1.20(c) has been paid, will be announced in the *Official Gazette*. Any reexaminations at the initiative of the Commissioner pursuant to § 1.520 will also be announced in the *Official Gazette*. The announcement shall include at least the date of the request, if any, the reexamination request control number or the Commissioner initiated order control number, patent number, title, class and subclass, name of the inventor, name of the patent owner of record, and the examining group to which the reexamination is assigned.

* * * * *

2. Section 1.12 is revised to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) The assignment records, relating to original or reissue patents, including

digests and indexes, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, are open to public inspection and copies of any instrument recorded may be obtained upon requests and payment of the fee set forth in § 1.19(a)(5).

(b) Assignment records, digests, and indexes, relating to any pending or abandoned patent application are not available to the public. Copies of any such assignment records and information with respect thereto shall be obtainable only upon written authority of the applicant or applicant's assignee or attorney or agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided by these rules.

(c) Any request by a member of the public seeking copies of any assignment records of any pending or abandoned patent application preserved in secrecy under § 1.14, or any information with respect thereto, must (1) be in the form of a petition accompanied by the petition fee set forth in § 1.17(i) or (2) include written authority granting access to the member of the public to the particular assignment records from the applicant or applicant's assignee or attorney or agent of record.

(d) An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number or international application number of the application, an extra charge as set forth in § 1.21(f) will be made for the time consumed in making a search for such assignment.

3. Section 1.14 is amended by adding a new paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or of any papers relating thereto, must (1) be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i) or (2) include written authority granting access to the member of the public in that particular application from the applicant or the

applicant's assignee or attorney or agent of record.

4. A new § 1.19 is added which reads as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

- (a) Uncertified copies of Office documents:
 - (1) Printed copy of a patent, including a design patent, or defensive publication document, except color plant patent—\$1.00
 - (2) Printed copy of a plant patent in color—\$8.00
 - (3) Copy of patent application as filed, each 50 pages or fraction thereof—\$18.00
 - (4) Copy of patent file wrapper and contents, each 100 pages or fraction thereof—\$30.00
 - (5) Copy of Office records, except as provided in paragraphs (a) (1) through (4) of this section, per page—\$0.30
 - (6) Microfiche copy of microfiche, per microfiche—\$2.00
- (b) Certified copies of Office documents:
 - (1) For certifying Office records, per certificate—\$3.50
 - (2) For a search of assignment records, abstract of title and certification, per patent—\$12.00
 - (3) For comparing copies not prepared by the Office with the original, prior to certification of the copies, per page—\$0.10
- (c) Subscription services:
 - (1) Subscription orders for printed copies of patents as issued, annual service charge for entry of order and one subclass—\$4.00
 - (2) For annual subscription to each additional subclass in addition to the one covered by the fee under paragraph d (c)(1) of this section, per subclass—\$0.40
- (d) Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum—\$50.00
- (e) Lists of patents in subclass:
 - (1) For list of all United States patents in a subclass, per 100 patent numbers or fraction thereof—\$2.00
 - (2) For list of United States patents in a subclass limited by date or patent number, per 50 patent numbers or fraction thereof—\$2.00

5. Section 1.21 is revised to read as follows:

§ 1.21 Miscellaneous fees and charges.

The Patent and Trademark Office has established the following fees for the services indicated:

- (a) Registration of attorneys and agents:
 - (1) For admission to examination for registration to practice, fee payable upon application—\$75.00
 - (2) On registration to practice—\$50.00
 - (3) For reinstatement to practice—\$25.00
 - (4) For certificate of good standing as an attorney or agent—\$10.00
- (b) Deposit accounts:

(1) For establishing or reinstating a deposit account—\$10.00

(2) Service charge for each month when the balance at the end of the month is below \$40—\$2.00

(c) Disclosure document: For filing a disclosure document—\$10.00

(d) Delivery box: Local delivery box rental, per annum—\$24.00

(e) International-type search reports: For preparing an international-type search report of an international-type search made at the time of the first action on the merits in a national patent application—\$25.00

(f) Search of Office records: For searching Patent and Trademark Office records for purposes not otherwise specified, per one-half hour or fraction thereof—\$10.00

(g) Copy machine tokens: Token for copying machine, each—\$0.20

(h) Recording of documents:

(1) For recording each assignment, agreement or other paper relating to the property in a patent or application—\$20.00

(2) Where a document to be recorded under paragraph (h)(1) of this section refers to more than one patent or application, for each additional patent or application—\$5.00

(i) Publication in *Official Gazette*: For publication in the *Official Gazette* of a notice of the availability of an application or a patent for licensing or sale, each application or patent—\$6.00

(j) For a duplicate or replacement of a permanent Office user pass (There is no charge for the first permanent user pass)—\$5.00

(k) For items and services, that the Commissioner finds may be supplied, for which fees are not specified by statute or by this section, such charges as may be determined by the Commissioner with respect to each such item or service—actual cost

6. Section 1.24 is revised to read as follows:

§ 1.24 Coupons.

Coupons in denominations of forty cents and one dollar are sold by the Patent and Trademark Office for the convenience of regular purchasers of U.S. patents and trademark registrations; these coupons may not be used for any other purpose. The 40-cent coupons are sold individually and in books of 50 with stubs for record for \$20. The one dollar coupons are sold individually and in books of 50 with stubs for record for \$50. These coupons are good until used; they may be transferred but cannot be redeemed.

7. Section 1.25 is revised to read as follows:

§ 1.25 Deposit accounts.

(a) For the convenience of attorneys, agents, and the general public in paying any fees due, in ordering services

offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account (§ 1.21(b)(1)). A minimum deposit of \$50 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all services, copies, etc., requested must always be on deposit. A service charge (§ 1.21(b)(2)) will be assessed for each month that the balance at the end of the month is below \$40.

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination.

8. Section 1.26 is revised to read as follows:

§ 1.26 Refunds.

(a) Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of one dollar or less will not be returned unless specifically demanded within a reasonable time, nor will the payer be notified of such amount; amounts over one dollar may be returned by check or, if requested, by credit to a deposit account.

(b) [Reserved]

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of \$1,200.00 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.45 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.45 Joint inventors.

(b) If an application for patent has been made through error and without any deceptive intention by two or more persons as joint inventors when they were not in fact joint inventors, the application may be amended to remove the names of those not inventors upon filing of a petition including a statement of the facts verified by all of the original applicants, the required fee (§ 1.17(h)), and an oath or declaration as required by § 1.65 by the applicant who is the actual inventor, provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

(c) If an application for patent has been made through error and without any deceptive intention by less than all the actual joint inventors, the application may be amended to include all the joint inventors upon filing of a petition including a statement of the facts verified by, and an oath or declaration as required by § 1.65 executed by all the actual joint inventors, along with the required fee (§ 1.17(h)), provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

10. Section 1.47 is revised to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the omitted inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts and by the required fee (§ 1.17(h)) and must state the last known address of the omitted inventor. The Patent and Trademark Office shall forward notice of the filing of the application to the omitted inventor at said address. Should such notice be returned to the Office undelivered, or should the address of the omitted inventor be unknown, notice of the filing of the application shall be published in the *Official Gazette*. The omitted inventor may subsequently join in the application on filing an oath or declaration of the character required by § 1.65. A patent may be granted to the inventor making the application, upon a showing satisfactory to the Commissioner, subject to the same

rights which the omitted inventor would have had if he or she had been joined.

(b) Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for the inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, and by the required fee (§ 1.17(h)) and must state the last known address of the inventor. The assignment, written agreement to assign or other evidence or proprietary interest, or a verified copy thereof, must be filed in the Patent and Trademark Office. The Office shall forward notice of the filing of the application to the inventor at the address stated in the application. Should such notice be returned to the Office undelivered, or should the address of the inventor be unknown, notice of the filing of the application shall be published in the *Official Gazette*. The inventor may subsequently join in the application on filing an oath or declaration of the character required by § 1.65. A patent may be granted to the inventor upon a showing satisfactory to the Commissioner.

11. Section 1.51 is amended by revising paragraph (a)(4) and by adding a new paragraph (c) to read as follows:

§ 1.51 General requisites of an application.

(a) * * *

(4) The prescribed filing fee, see § 1.16.

* * *

(c) Applicants may desire and are permitted to file with, or in, the application an authorization to charge, at any time during the pendency of the application, any fees required under any of §§ 1.16 to 1.18 to a deposit account established and maintained in accordance with § 1.25.

12. Section 1.52 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The application, any amendments or corrections thereto, and the oath or declaration must be in the English language except as provided for in § 1.69 and paragraph (d) of this section, or be accompanied by a verified translation of the application and a translation of any corrections or amendments into the

English language. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written, typed, or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing, typing, or printing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

(d) An application including a signed oath or declaration may be filed in a language other than English if it is accompanied by the fee set forth in § 1.17(k). A verified English translation of the non-English language application is required to be filed with the application or within such time as may be set by the Office.

13. Section 1.55 is amended by revising paragraph (b) to read as follows:

§ 1.55 Serial number and filing date of application.

(b) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.65. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed in the case of interference (§ 1.224); when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner; and in all other cases they must be filed not later than the date the issue fee is paid. If the papers filed are not in the English language, a translation need not be filed except in the three particular instances specified in the preceding sentence, in which event a sworn translation or a translation certified as accurate by a sworn or official translator must be filed. If the priority papers are submitted after the date the issue fee is paid, they must be accompanied by a petition requesting their entry and the fee set forth in § 1.17(i).

14. Section 1.75 is amended by revising paragraph (c) to read as follows:

§ 1.75 Claim(s).

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes, also, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. In addition to the other filing fees, any original application which is filed with, or is amended to include, multiple dependent claims must have paid therein the fee set forth in § 1.16(d). Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

15. Section 1.85 is revised to read as follows:

§ 1.85 Informal drawings.

The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto, if suitable for reproduction, may be admitted but in such case the drawing must be corrected or a new one furnished, as required.

§ 1.86 [Removed]

16. Section 1.86 is removed.

17. Section 1.102 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Commissioner to expedite the business of the Office, or upon filing of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a verified showing which, in the opinion of the

Commissioner, will justify so advancing it.

(c) A petition to make an application special may be filed without a fee if the basis for the petition is the applicant's age or health or that the invention will materially enhance the quality of the environment or materially contribute to the development or conservation of energy resources.

(d) A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the petition fee set forth in § 1.17(i).

18. Section 1.103 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in § 1.17(i). Action will not be suspended when a response by the applicant to an Office action is required.

(b) If action by the Office on an application is suspended when not requested by the applicant, the applicant shall be notified of the reasons therefor.

19. Section 1.104 is amended by revising paragraph (d) to read as follows:

§ 1.104 Nature of examination; examiner's action.

(d) Any national application may also have an international-type search report prepared thereon at the time of the national examination on the merits, upon specific written request therefor and payment of the international-type search report fee. See § 1.21(e) for amount of fee for preparation of international-type search report.

20. Section 1.134 is added and reads as follows:

§ 1.134 Time period for response to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for response to an Office action. Unless the applicant is notified in writing that response is required in less than six months, a maximum period of six months is allowed.

21. Section 1.135 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.135 Abandonment for failure to respond within time period.

(a) If an applicant of a patent application fails to respond within the time period provided under §§ 1.134 and 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper action as the condition of the case may require. The admission of an amendment not responsive to the last Office action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When action by the applicant is a bona fide attempt to respond and to advance the case to final action, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

* * * * *

22. Section 1.136 is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) If an applicant is required to respond within a non-statutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless (1) applicant is notified otherwise in an Office action or (2) the application is involved in an interference declared pursuant to § 1.207. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or

before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.245 for extension of time in interference proceedings.

23. Section 1.165 is amended by revising paragraph (b) to read as follows:

§ 1.165 Drawings.

* * * * *

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings must be submitted. Color drawings may be made either in permanent water color or oil, or in lieu thereof may be photographs made by color photography or properly colored on sensitized paper. Permanently mounted color photographs are acceptable. The paper in any case must correspond in size, weight and quality to the paper required for other drawings. See § 1.84.

24. Section 1.171 is revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set forth in § 1.19(b)(2), to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

25. Section 1.177 is revised to read as follows:

§ 1.177 Reissue in divisions.

The Commissioner may, in his or her discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless

otherwise ordered by the Commissioner upon petition and payment of the fee set forth in § 1.17(i), all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

26. Section 1.181 is amended by revising paragraphs (d) and (g) to read as follows:

§ 1.181 Petition to the Commissioner.

* * * * *

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

* * * * *

(g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

27. Section 1.182 is revised to read as follows:

§ 1.182 Questions not specifically provided for.

All cases not specifically provided for in the regulations of this part will be decided in accordance with the merits of each case by or under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

28. Section 1.183 is revised to read as follows:

§ 1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

29. Section 1.191 is amended by revising paragraph (a) to read as follows:

§ 1.191 Appeal to Board of Appeals.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination, any of the claims of which have been twice rejected, or who has been given a final rejection (§ 1.113), may, upon the

payment of the fee set forth in § 1.17(e), appeal from the decision of the examiner to the Board of Appeals within the time allowed for response.

30. Section 1.192 is amended by revising paragraph (a) to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. The brief must include a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved. The time periods set forth herein are subject to the provisions of § 1.136.

31. Section 1.194 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.194 Oral hearing.

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within one month after the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

(c) If no request and fee for oral hearing have been timely filed by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing and has submitted the fee set forth in § 1.17(g), a day of hearing will be set, and due notice thereof given to the appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

32. Section 1.197 is amended by revising paragraph (b) to read as follows:

§ 1.197 Action following decision.

(b) A single request for rehearing or reconsideration, or modification of the decision, may be made if filed within thirty days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Appeals so states. Such time may be extended under the provisions of § 1.136.

33. Section 1.231 is amended by revising paragraph (a)(1) to read as follows:

§ 1.231 Motions before the primary examiner.

(a) Within the period set in the notice of interference for filing motions any party to an interference may file a motion seeking:

(1) To dissolve as to one or more counts, except that such motion based on facts sought to be established by affidavits, declarations or evidence outside of official records and printed publications will not normally be considered. A motion to dissolve an interference in which a patentee is a party on the ground that the claims corresponding to the counts are unpatentable to the patentee over patents or printed publications will be considered through reexamination if it complies with the requirements of § 1.510(b) and is accompanied by the fee for requesting reexamination set in § 1.20(c). Otherwise, a motion to dissolve an interference in which a patentee is a party will not be considered if it would necessarily result in the conclusion that the claims of the patent which correspond to the counts are unpatentable to the patentee on a ground which is not ancillary to priority. Where a motion to dissolve is based on prior art, service on opposing parties must include copies of such prior art. A motion to dissolve on the ground that there is no interference in fact will not be considered unless the interference involves a design or plant patent or application or unless it relates to a count which differs from the corresponding claim of an involved patent or of one or more of the involved applications as provided in §§ 1.203(a) and 1.205(a).

34. Section 1.245 is revised to read as follows:

§ 1.245 Extension of time.

Extensions of time in any interference proceeding not otherwise provided for may be had by stipulation of the parties, subject to approval, or on motion duly brought, sufficient cause being shown for such extension. The provisions of § 1.136 do not apply to time periods in interferences.

35. Section 1.246 is revised to read as follows:

§ 1.246 Late papers.

A motion or other paper belatedly filed will not normally be considered except upon a showing, under oath or in the form of a declaration (§ 1.68), of sufficient cause as to why such motion or paper was not timely presented. The provisions of § 1.136 do not apply to time periods in interferences.

36. Section 1.263 is revised to read as follows:

§ 1.263 Statutory disclaimer by patentee.

The disclaimer referred to in § 1.262, when made by a patentee in interference is not a disclaimer under 35 U.S.C. 253. If a disclaimer under the statute and the fee set forth in § 1.20(d) (see § 1.321) cancelling claims involved in the interference from the patent, is made by the patentee, including all assignees as shown by the records of the Patent and Trademark Office, the interference will be dissolved pro forma as to such claims.

37. Section 1.268 is added to read as follows:

§ 1.268 Filing of interference settlement agreements.

(a) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, must be in writing and a true copy thereof filed in the Patent and Trademark Office, directed to the Board of Patent Interferences, before the termination of the interference as between the said parties to the agreement or understanding.

(b) If any party filing the agreement or understanding pursuant to paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i) and on a showing of good cause.

(c) Failure to file the copy of the agreement or understanding pursuant to paragraph (a) of this section, will render permanently unenforceable such agreement or understanding and any patent of the parties involved in the interference or any patent subsequently issued on any application of the parties so involved. The Commissioner may, however, upon petition accompanied by the fee set forth in § 1.17(h) and on a showing of good cause for failure to file

within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

38. Section 1.292 is amended by revising paragraph (a) to read as follows:

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations and the fee set forth in § 1.17(j) is filed by one having information of the pendency of an application and is found, on reference to the primary examiner, to make a prima facie showing that the invention involved in an interference or claimed in an application believed to be on file had been in public use or on sale one year before the filing of the application, or before the date alleged by an interfering party in his or her preliminary statement or the date of invention established by such party, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, times may be set for taking testimony, which shall be taken as provided by §§ 1.271 to 1.286. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

39. Section 1.304 is amended by revising paragraph (a) to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice and reasons of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Appeals or the Board of Patent Interferences. If a request for rehearing or reconsideration, or modification of the decision, is filed within the time provided pursuant to § 1.197(b) or § 1.256(b), the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. The time periods set forth herein are subject to the provisions of § 1.136.

40. Section 1.311 is revised to read as follows:

§ 1.311 Notice of allowance.

(a) If, on examination, it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to applicant at the correspondence address indicated in

§ 1.33, calling for the payment of a specified sum constituting the issue fee (§ 1.18), which shall be paid within 3 months from the date of the mailing of the notice of allowance.

(b) An authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application, either before or after mailing of the notice of allowance. Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of the notice of allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the notice of allowance.

41. Section 1.312 is revised to read as follows:

§ 1.312 Amendments after allowance.

(a) No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment pursuant to this paragraph filed before the payment of the issue fee may be entered on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the case from issue.

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

42. Section 1.313 is revised to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. Any such petition by the applicant must include a showing of good and sufficient reasons why withdrawal of the application is necessary and, if the reason for the withdrawal is not the fault of the Office, must be accompanied by the fee set forth in § 1.17(i). If the application is withdrawn from issue, a new notice of allowance will be sent if the application is again allowed. Any amendment accompanying a petition to withdraw an application from issue must comply with the requirements of § 1.312.

(b) When the issue fee has been paid, and the patent to be issued has received its issue date and patent number, the application will not be withdrawn from issue for any reason except (1) mistake on the part of the Office, (2) a violation of § 1.56 or illegality in the application, (3) unpatentability of one or more claims, or (4) for interference.

43. Section 1.314 is revised to read as follows:

§ 1.314 Issuance of patent.

If payment of the issue fee is timely made, the patent will issue in regular course unless (a) the application is withdrawn from issue (§ 1.313) or (b) issuance of the patent is deferred. Any petition by the applicant requesting deferral of the issuance of a patent must be accompanied by the fee set forth in § 1.17(i) and must include a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

44. Section 1.321 is revised to read as follows:

§ 1.321 Statutory disclaimer.

(a) A disclaimer under 35 U.S.C. 253 must be accompanied by the fee set forth in § 1.20(d) and identify the patent and the claim or claims which are disclaimed, and be signed by the person making the disclaimer, who shall state therein the extent of his or her interest in the patent. A disclaimer which is not a disclaimer of a complete claim or claims may be refused recordation. A notice of the disclaimer is published in the *Official Gazette* and attached to the printed copies of the specification. In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

(b) A terminal disclaimer, when filed in an application to obviate a double patenting rejection, must be accompanied by the fee set forth in § 1.20(d) and include a provision that any patent granted on that application shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection.

45. Section 1.324 is revised to read as follows:

§ 1.324 Correction of inventorship in patent.

Whenever a patent is issued and it appears that there was a misjoinder or nonjoinder of inventors and that such misjoinder or omission occurred by error and without deceptive intention, the Commissioner may, on petition of all the parties and the assignees and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, issue a certificate deleting the misjoined inventor from the patent or adding the non-joined inventor to the patent.

46. Section 1.331 is amended by revising paragraph (a) to read as follows:

§ 1.331 Recording of assignments.

(a) Assignments, including grants and conveyances, of patents, national applications, or international applications which designate the United States of America, will be recorded in the Patent and Trademark Office under 35 U.S.C. 261. Other instruments affecting title to a patent, a national application, or an international application which designates the United States of America, and licenses, even though the recording thereof may not serve as constructive notice under 35 U.S.C. 261, will be recorded as provided in this section or at the discretion of the Commissioner. Any instrument to be recorded, except those under Part 7 of this title, must be accompanied by the fee set forth in § 1.21(h).

47. Section 1.332 is revised to read as follows:

§ 1.332 Receipt and recording.

Assignments are recorded in regular order as promptly as possible, and then transmitted with the date and identification of the record stamped thereon to the persons entitled to them. The date of the record is the date of the receipt of the assignment at the Office in proper form and accompanied by the fee set forth in § 1.21(h).

48. Section 1.334 is revised to read as follows:

§ 1.334 Issue of patent to assignee.

(a) In case of an assignment of the entire interest in the invention and application, or of the entire interest in the patent to be granted, the patent will normally issue to the assignee. If the assignee should hold an undivided part interest, the patent will normally issue jointly to the inventor and the assignee. If it is desired that the patent so issue, the assignment in either case must first have been recorded, and at a day not later than the date payment is made of the issue fee.

(b) At the time of payment of the issue fee, a statement must be furnished indicating whether or not an assignment has been filed with the Patent and Trademark Office. In the event an assignment has been filed, such statement must include the name and address of the assignee and indicate whether or not an acknowledgement of a recorded assignment has been received from the Patent and Trademark Office.

(c) If the assignment is recorded after the date of payment of the issue fee, the

assignee may petition that the patent issue to the assignee as recorded. Any such petition must be accompanied by the fee set forth in § 1.17(i).

49. Section 1.341 is amended by revising paragraph (h) to read as follows:

§ 1.341 Registration of attorneys and agents.

(h) *Oath and registration fee.* Before his or her name may be entered on the register of attorneys or on the register of agents, every applicant for registration must, after his or her application is approved, subscribe and swear to an oath or make a declaration prescribed by the Commissioner of Patents and Trademarks and pay the prescribed registration fee. (See § 1.21(a)(2).)

50. Section 1.347 is revised to read as follows:

§ 1.347 Removing names from registers.

Attorneys and agents, registered to practice before the Patent and Trademark Office, should notify the Office of any change of address for entry on the register, by letter separate from any notice of change of address filed in individual applications. The Office may address a letter to any person on the registers, at the address of which separate notice for the register was last received, for the purpose of ascertaining whether such person desires to remain on the register. The name of any person failing to reply and give the information requested within a time limit specified will be removed from the register, and the names so removed published in the *Official Gazette*. Any name so removed may be reinstated, either on the register of attorneys or the register of agents, as may be appropriate. Any request for reinstatement must be accompanied by the fee set forth in § 1.21(a)(3).

51. Section 1.445 is amended by revising paragraphs (a) (1) through (4) to read as follows:

§ 1.445 International application filing and processing fees.

- (a) * * *
- (1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—\$125.00
 - (2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:
 - (i) No corresponding prior United States national application with fee has been filed—\$500.00
 - (ii) Corresponding prior United States national application with fee has been filed—\$250.00
 - (3) A supplemental search fee when required (see PCT Art. 17(3)(a) and PCT

Rule 40.2)—\$125.00 per additional invention.

(4) The national fee, that is, the amount set forth as the filing fee under § 1.16 (a) through (d) credited by an amount of \$250 where an international search fee has been paid on the corresponding international application to the United States as an International Searching Authority. Where the amount of the credit is in excess of that required for the national fee, a request for a refund of the excess under § 1.446(b) may be filed at the time of paying the national fee. Only one such credit is permitted based on a single international search fee.

52. Section 1.446 is amended by revising paragraph (b) to read as follows:

§ 1.446 Refund of international application filing and processing fees.

(b) Refund of a portion of the search fee may be made to the extent set forth in § 1.445(a)(4) if requested at the time of paying the national fee.

53. Section 1.451 is amended by revising paragraph (b) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

(b) Whenever the priority of an earlier United States national application is claimed in an international application, the applicant may request in a letter of transmittal accompanying the international application upon filing with the United States Receiving Office, that the Patent and Trademark Office prepare a certified copy of the national application for transmittal to the International Bureau (PCT Art. 8 and PCT Rule 17). The fee for preparing a certified copy is stated in § 1.19(a)(4) and (b)(1).

54. Section 1.510 is amended by revising paragraph (a) to read as follows:

§ 1.510 Request for reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for reexamination by the Patent and Trademark Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the fee for requesting reexamination set in § 1.20(c).

Alternative A—Rule Changes Under Only Public Law 96-517

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

55. A new § 1.16 is added which reads as follows:

§ 1.16 National application filing fees.

- (a) Basic fee for filing each application for an original patent, except design or plant cases—\$150.00
- (b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3—\$15.00
- (c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.)—\$5.00
- (d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s), per application—\$50.00
- (If the additional fees required by paragraphs (b), (c) and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)
- (e) [Reserved]
- (f) For filing each design application—\$63.00
- (g) Basic fee for filing each plant application—\$100.00
- (h) Basic fee for filing each reissue application—\$150.00
- (i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent—\$15.00
- (j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.)—\$5.00

Note.—See § 1.445 for international application filing and processing fees.

56. A new § 1.17 is added which reads as follows:

§ 1.17 Patent application processing fees.

- (a) Extension fee for response within first month pursuant to § 1.136(a)—\$50.00
- (b) Extension fee for response within second month pursuant to § 1.136(a)—\$150.00

- (c) Extension fee for response within third month pursuant to § 1.136(a)—\$350.00
- (d) Extension fee for response within fourth month pursuant to § 1.136(a)—\$550.00
- (e) For filing a notice of appeal from the examiner to the Board of Appeals—\$58.00
- (f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal—\$58.00
- (g) For filing a request for an oral hearing before the Board of Appeals—\$50.00
- (h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—\$120.00
 - § 1.45—for correction of inventorship
 - § 1.47—for filing by other than all the inventors or a person not the inventor
 - § 1.182—for decision on questions not specifically provided for
 - § 1.183—to suspend the rules
 - § 1.268—for late filing of interference settlement agreement
- (i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—\$60.00
 - § 1.12—for access to an assignment record
 - § 1.14—for access to an application
 - § 1.55—for entry of late priority papers
 - § 1.102—to make application special
 - § 1.103—to suspend action in application
 - § 1.177—for divisional reissues to issue separately
 - § 1.268—for access to interference settlement agreement
 - § 1.312—for amendment after payment of issue fee
 - § 1.313—to withdraw an application from issue
 - § 1.314—to defer issuance of a patent
 - § 1.334—for patent to issue to assignee, assignment recorded late
- (j) For filing a petition to institute a public use proceeding under § 1.292—\$750.00
- (k) For processing an application filed with a specification in a non-English language (§ 1.52(d))—\$20.00
- (l) For filing a petition (1) for the revival of an abandoned application under 35 U.S.C. 133, or (2) for delayed payment of the issue fee under 35 U.S.C. 151—\$120.00

57. A new § 1.18 is added which reads as follows:

§ 1.18 Patent issue fees.

- (a) Issue fee for issuing each original or reissue patent, except a design or plant patent—\$250.00
- (b) Issue fee for issuing a design patent for a 3, 7 or 14 year term—\$88.00
- (c) Issue fee for issuing a plant patent—\$125.00

58. A new § 1.20 is added which reads as follows:

§ 1.20 Post-issuance fees.

- (a) For providing a certificate of correction of applicant's mistake (§ 1.323)—\$40.00
- (b) Petition for correction of inventorship in patent (§ 1.324)—\$120.00
- (c) For filing a request for reexamination (§ 1.510(a))—\$1,500.00

- (d) For filing each statutory disclaimer (§ 1.321)—\$50.00
- (e) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980, in force beyond 4 years; the fee is due by three years and six months after the original grant—\$200.00
- (f) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980, in force beyond 8 years; the fee is due by seven years and six months after the original grant—\$400.00
- (g) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980, in force beyond 12 years; the fee is due by eleven years and six months after the original grant—\$600.00.

59. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application.

(a) An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by a showing of the causes of the delay, by the proposed response unless it has been previously filed, and by the petition fee set forth in § 1.17(1). Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) [Reserved]

(c) Any petition filed pursuant to paragraph (a) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment. Any such petition not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

60. Section 1.155 is revised to read as follows:

§ 1.155 Issue and term of design patents. (a) If, on examination, it shall appear that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant, or applicant's attorney or agent, calling for the payment of the issue fee (§ 1.18(b)). If this issue fee is not paid within 3 months of the date of the notice of allowance, the application shall be regarded as abandoned.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment

had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) [Reserved]

(d) Any petition filed pursuant to paragraph (b) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment. Any such petition not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

61. Section 1.316 is revised to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

(a) If the issue fee is not paid within 3 months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as through no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) [Reserved]

(d) Any petition filed pursuant to paragraph (b) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment. Any such petition not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

62. Section 1.317 is revised to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) If the issue fee was paid prior to October 1, 1982, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three month period.

(b) The Commissioner may accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by (1) the remaining balance of the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) [Reserved]

(d) Any petition filed pursuant to paragraph (b) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the lapse. Any such petition not filed within six months of the date of lapse must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of the patent equivalent to the period of lapse of the patent.

Alternative B—Rule Changes Under H.R. 6260.

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

63. A new § 1.16 is added which reads as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f))—\$150.00

By other than a small entity—\$300.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3—

By a small entity (§ 1.9(f))—\$15.00

By other than a small entity—\$30.00

(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f))—\$5.00

By other than a small entity—\$10.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))—\$50.00

By other than a small entity—\$100.00

(If the additional fees required by paragraphs (b), (c) and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application:

By a small entity (§ 1.9(f))—\$50.00

By other than a small entity—\$100.00

(f) For filing each design application:

By a small entity (§ 1.9(f))—\$62.50

By other than a small entity—\$125.00

(g) Basic fee for filing each plant application:

By a small entity (§ 1.9(f))—\$100.00

By other than a small entity—\$200.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f))—\$150.00

By other than a small entity—\$300.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f))—\$15.00

By other than a small entity—\$30.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.):

By a small entity (§ 1.9(f))—\$5.00

By other than a small entity—\$10.00

(Note, see § 1.445 for international application filing and processing fees.)

64. A new § 1.17 is added which reads as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))—\$25.00

By other than a small entity—\$50.00

(b) Extension fee for response within second month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))—\$75.00

By other than a small entity—\$150.00

(c) Extension fee for response within third month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))—\$175.00

By other than a small entity—\$350.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))—\$275.00

By other than a small entity—\$555.00

- (e) For filing a notice of appeal from the examiner to the Board of Appeals:
By a small entity (§ 1.9(f))—\$57.50
By other than a small entity—\$115.00
- (f) In addition to the fee for filing notice of appeal, for filing brief in support of an appeal:
By a small entity (§ 1.9(f))—\$57.50
By other than a small entity—\$115.00
- (g) For filing a request for an oral hearing before the Board of Appeals:
By a small entity (§ 1.9(f))—\$50.00
By other than a small entity—\$100.00
- (h) For a filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—\$120.00
—§ 1.45—for correction of inventorship
—§ 1.47—for filing by other than all the inventors or a person not the inventor
—§ 1.182—for decision on questions not specifically provided for
—§ 1.183—to suspend the rules
—§ 1.268—for late filing of interference settlement agreement
- (i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—\$60.00
—§ 1.12—for access to an assignment record
—§ 1.14—for access to an application
—§ 1.55—for entry of late priority papers
—§ 1.102—to make application special
—§ 1.103—to suspend action in application
—§ 1.177—for divisional reissues to issue separately
—§ 1.268—for access to interference settlement agreement
—§ 1.312—for amendment after payment of issue fee
—§ 1.313—to withdraw an application from issue
—§ 1.314—to defer issuance of a patent
—§ 1.334—for patent to issue to assignee, assignment recorded late
- (j) For filing a petition to institute a public use proceeding under § 1.292—\$750.00
- (k) For processing an application filed with a specification in a non-English language (§ 1.52(d))—\$20.00
- (l) For filing a petition (1) for the revival of an abandoned application under 35 U.S.C. 133, or (2) for delayed payment of the issue fee under 35 U.S.C. 151:
By a small entity (§ 1.9(f))—\$25.00
By other than a small entity—\$50.00
- (m) For filing a petition (1) for revival of an unintentionally abandoned application or (2) for the unintentionally delayed payment of the fee for issuing a patent:
By a small entity (§ 1.9(f))—\$250.00
By other than a small entity—\$500.00

65. A new § 1.18 is added which reads as follows:

§ 1.18 Patent issue fees.

- (a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.9(f))—\$250.00
By other than a small entity—\$500.00
- (b) Issue fee for issuing a design patent:
By a small entity (§ 1.9(f))—\$87.50
By other than a small entity—\$175.00
- (c) Issue fee for issuing a plant patent:
By a small entity (§ 1.9(f))—\$125.00

By other than a small entity—\$250.00

66. A new § 1.20 is added which reads as follows:

§ 1.20 Post-issuance fees.

- (a) For providing a certificate of correction of applicant's mistake (§ 1.323)—\$40.00
- (b) Petition for correction of inventorship in patent (§ 1.324)—\$120.00
- (c) For filing a request for reexamination (§ 1.510(a))—\$1,500.00
- (d) For filing each statutory disclaimer (§ 1.321):
By a small entity (§ 1.9(f))—\$25.00
By other than a small entity—\$50.00
- (e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after (date of enactment), in force beyond 4 years; the fee is due by three years and six months after the original grant—\$200.00
- (f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after (date of enactment), in force beyond 8 years; the fee is due by seven years and six months after the original grant—\$400.00
- (g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after (date of enactment), in force beyond 12 years; the fee is due by eleven years and six months after the original grant—\$600.00
- (h) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980 and before (date of enactment), in force beyond 4 years; the fee is due by three years and six months after the original grant:
By a small entity (§ 1.9(f))—\$200.00
By other than a small entity—\$400.00
- (i) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980 and before (date of enactment), in force beyond 8 years; the fee is due by seven years and six months after the original grant:
By a small entity (§ 1.9(f))—\$400.00
By other than a small entity—\$800.00
- (j) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980 and before (date of enactment), in force beyond 12 years; the fee is due by eleven years and six months after the original grant:
By a small entity (§ 1.9(f))—\$600.00
By other than a small entity—\$1,200.00

67. Section 1.66 is revised to read as follows:

§ 1.66 Officers authorized to administer oaths.

(a) The oath or affirmation may be made before any person within the United States authorized by law to administer oaths. An oath made in a foreign country may be made before any diplomatic or consular officer of the

United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, or by an apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States. The oath shall be attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made. Such oath or affirmation shall be valid as to execution if it complies with the laws of the State or country where made. When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

(b) When the oath is taken before an officer in a country foreign to the United States, any accompanying application papers, except the drawings, must be attached together with the oath and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination, but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed.

68. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application.

(a) An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by a showing of the causes of the delay, by the proposed response unless it has been previously filed, and by the petition fee set forth in § 1.17(l). Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) An application unintentionally abandoned for failure to prosecute may be revived as a pending application if the delay was unintentional. A petition to revive an unintentionally abandoned application must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date of abandonment of the application. A petition to revive an unintentionally abandoned application must be accompanied by (1) a statement that the abandonment was unintentional, (2) a proposed response unless it has been previously filed, and (3) a petition fee as set forth in § 1.17(m). Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional. The three month period set forth in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.

(c) Any petition pursuant to paragraph (a) of this section not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

69. Section 1.155 is revised to read as follows:

§ 1.155 Issue and term of design patents.

(a) If, on examination, it shall appear that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant, or applicant's attorney or agent, calling for the payment of the issue fee (§ 1.18(b)). If this issue fee is not paid within 3 months of the date of the notice of allowance, the application shall be regarded as abandoned.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed

after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of abandonment of the application. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for unintentionally delayed payment (§ 1.17(m)), and (3) a statement that the delay was unintentional. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional. The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

70. Section 1.316 is revised to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

(a) If the issue fee is not paid within 3 months from the date of the notice of allowance, the application will be regarded as abandoned. Such an

abandoned application will not be considered as pending before the Patent and Trademark Office.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of abandonment of the application. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for unintentionally delayed payment (§ 1.17(m)), and (3) a statement that the delay was unintentional. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional. The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a

terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

71. Section 1.317 is revised to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) If the issue fee was paid prior to October 1, 1982, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three month period.

(b) The Commissioner may accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the lapse, and must be accompanied by (1) the remaining balance of the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the remaining balance of the fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be filed within one year of the date on which the patent lapsed or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of lapse of the patent. The petition to accept the delayed payment must be accompanied by (1) the remaining balance of the issue fee, unless it has been previously submitted, (2) the fee for unintentionally delayed payment (§ 1.17(m)), and (3) a statement that the delay was unintentional. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay in payment was unintentional. The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted.

Petitions to the Commissioner under § 1.183 to waive any time periods for requesting acceptance of an unintentionally delayed payment will not be considered, but will be returned to the applicant.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of lapse must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of the patent equivalent to the period of lapse of the patent.

(35 U.S.C. 6 and 25)

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

Section II—Revision of Trademark Fees

Rule Changes Common to Public Law 96-517 and H.R. 6260

72. Section 2.85 is amended by revising paragraph (e) to read as follows:

§ 2.85 Classification schedules.

(e) Where the amount of the fee received on filing an appeal in connection with an application or on an application for renewal or in connection with a petition for cancellation is sufficient for at least one class of goods or services but is less than the required amount because multiple classes in an application or registration are involved, the appeal or renewal application or petition for cancellation will not be refused on the ground that the amount of the fee was insufficient if the required additional amount of the fee is received in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office, or if action is sought only for the number of classes equal to the number of fees submitted.

73. Section 2.101 is amended by revising paragraph (c) to read as follows:

§ 2.101 Filing an opposition.

(c) If no fee, or a fee insufficient to cover at least one class, is filed within 30 days after publication of the mark to be opposed or within an extension of the time for filing an opposition, the opposition will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office.

74. Section 2.146 is amended by revising paragraph (b) to read as follows, and by removing paragraph (f):

§ 2.146 Petition to the commissioner.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested and the requisite fee (See § 2.6). Any brief in support thereof should accompany or be embodied in the petition; in contested cases any brief in opposition shall be filed within fifteen days after service of the petition. Where facts are to be proved in ex parte cases (as in petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20 (and exhibits, if any) must accompany the petition.

75. Section 2.162 is amended by revising paragraph (d) to read as follows:

§ 2.162 Requirements for affidavit or declaration during sixth year.

(d) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed before the expiration of the sixth year following the date of registration or of publication under Section 12(c) of the Act, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

76. Section 2.167 is amended by adding a paragraph (g) as follows:

§ 2.167 Affidavit or declaration under Section 15.

(g) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or

classes to which the affidavit or declaration pertains should be specified.

Alternative A—Rule Change Only Under Public Law 96-517

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

77. Section 2.6 is revised to read as follows:

§2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

- (a) For filing an application, per class—\$88.00
- (b) For filing an application for renewal of a registration, per class—\$150.00
- (c) For filing to publish a mark under § 12(c), per class—\$50.00
- (d) For issuing a new certificate of registration upon request of assignee—\$50.00
- (e) For a certificate of correction of registrant's error—\$50.00
- (f) For filing a disclaimer to a registration—\$50.00
- (g) For filing an amendment to a registration—\$50.00
- (h) For filing an affidavit under § 8 of the Act, per class—\$50.00
- (i) For filing an affidavit under § 15 of the Act, per class—\$50.00
- (j) For filing a combined affidavit under §§ 8 and 15 of the Act, per class—\$100.00
- (k) For petitions to the Commissioner—\$50.00
- (l) For filing petition to cancel or notice of opposition, per class—\$100.00
- (m) For ex parte appeal to the Trademark Trial and Appeal Board, per class—\$50.00
- (n) For printed copy of registered mark Copy only—.40 cents
Copy showing title and/or status—6.50

- (o) For certifying trademark records, per certificate—3.50
- (p) For photocopies or other reproductions of records, drawings, or printed material, per page of the material copied—.30
- (q) For recording trademark assignment, per document—20.00
For each mark in addition to one assigned in the same document—5.00
- (r) For abstracts of title to each registration or application, including the search—12.00
- (s) For special service handling of late filed fees in connection with a renewal—50.00
- (t) For items and services that the Commissioner finds may be supplied, for which fees are not specified, such charges as may be determined by the Commissioner with respect to each such item or service—actual cost.

Alternative B—Rule Change Only Under H.R. 6260

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

78. Section 2.6 is revised to read as follows:

§2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

- (a) For filing an application, per class—\$175.00
- (b) For filing an application for renewal of a registration, per class—\$300.00
- (c) For filing to publish a mark under section 12(c), per class—\$100.00
- (d) For issuing a new certificate of registration upon request of assignee—\$100.00
- (e) For a certificate of correction of registrant's error—\$100.00
- (f) For filing a disclaimer to a registration—\$100.00

- (g) For filing an amendment to a registration—\$100.00
- (h) For filing an affidavit under § 8 of the Act, per class—\$100.00
- (i) For filing an affidavit under § 15 of the Act, per class—\$100.00
- (j) For filing a combined affidavit under §§ 8 and 15 of the Act, per class—\$200.00
- (k) For petitions to the Commissioner—\$100.00
- (l) For filing petition to cancel or notice of opposition, per class—\$200.00
- (m) For exparte appeal to the Trademark Trial and Appeal Board, per class—\$100.00
- (n) For printed copy of registered mark Copy only—\$1.00
Copy showing title and/or status—\$6.50
- (o) For certifying trademark records, per certificate—\$3.50
- (p) For photocopies or other reproductions of records, drawings, or printed material, per page of the material copied—30 cents
- (q) For recording trademark assignments, per document—\$100.00
For each mark in addition to one assigned in the same document—\$20.00
- (r) For abstracts of title to each registration or application, including the search—\$12.00
- (s) For special service handling of late filed fees in connection with a renewal—\$100.00
- (t) For items and services that the Commissioner finds may be supplied, for which fees are not specified, such charges as may be determined by the Commissioner with respect to each such item or service—actual cost.

(Secs. 31 and 41 of the Trademark Act of July 5, 1946 (15 U.S.C. 1113 and 1123); (35 U.S.C. 6 and 25))

Dated: July 14, 1982.

Gerald J. Mossinghoff,
Commissioner of Patents and Trademarks.

[FR Doc. 82-20680 Filed 7-29-82; 8:45 am]

BILLING CODE 3510-16M

Test Report Federal

Friday
July 30, 1982

Part V

Department of the Interior

Bureau of Land Management

Federally Owned Coal; Amendments to
Coal Management Program Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2508]

43 CFR Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460, and 3470

Coal Management; Federally Owned Coal; Amendments to Coal Management Program Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking will eliminate burdensome, outdated and unneeded provisions of the existing coal management regulations. The specific amendments to the existing regulations resulted from public comments requested by the Secretary of the Interior and from an extensive review of the coal management program by Bureau of Land Management and Department of the Interior personnel.

EFFECTIVE DATE: August 30, 1982.

ADDRESS: Any suggestions or inquiries should be sent to: Director (540), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Monte Jordan, (202) 343-4636

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking amending the existing coal management program regulations was published in the *Federal Register* on December 16, 1981 (46 FR 61390). Comments were invited for a 60-day period during which time a total of 76 comments were received. The comments came from the following sources: 29 from companies, 26 from associations, 12 from state governments, 5 from individuals, 3 from Federal agencies and 1 from local government. The comments have been carefully reviewed as part of the decisionmaking process on this final rulemaking.

This final rulemaking has been coordinated with the amendments being made to Title 30 of the Code of Federal Regulations Part 211—Coal Exploration and Mining Operations—published elsewhere in the *Federal Register*. The two sets of regulations have been cross-referenced for the convenience of the users.

This final rulemaking reflects the formation of the Minerals Management Service on January 19, 1982, by Secretarial Order No. 3071 and the involvement of that agency in the Federal coal management program. References to U.S. Geological Survey

and the Conservation Division have been changed to references to Minerals Management Service throughout Group 3400 except where reference is to the Bureau of Land Management/Geological Survey/Office of Surface Mining Memorandum of Understanding. The Minerals Management Service will carry out the duties of the former Conservation Division of the Geological Survey under this memorandum of understanding.

The discussion of the comments is divided into two categories. The general comments that were offered will be discussed first and then the comments that were offered in connection with specific sections will be discussed.

General Comments

A majority of the comments commended the Department of the Interior for its effort and intent to clarify and reduce the paperwork burden and duplication imposed by the existing regulations. One comment summarized this sentiment, stating "that the proposed rules restore fairness, equity, practicality and recognition of Congressional intent." Some of the comments stated that some additional changes could still be made that would further reduce the burden on the public. For example, some comments suggested that what they viewed as the arbitrariness of the unsuitability criteria be reduced and that more be done to dispel the idea that coal mining is a "desperation social activity" or a "use of last resort" for Federal lands.

On the other hand, a relatively large number of comments expressed the view that the proposed rulemaking should not be adopted. These comments suggested that the changes made by the proposed rulemaking would lead to excessive leasing of Federal lands, reduce the role of citizens and State governments in the leasing process, systematically remove the obligation in the existing regulations to protect environmental and socioeconomic values, reduce the protection given surface owners by the existing regulations and not be in the public interest.

Most of the comments that expressed opposition to the adoption of the proposed rulemaking in final form were of the view that the new rulemaking constituted a new program which required the preparation of an environmental impact statement. Some comments stated that the proposed rulemaking did not meet the land use planning requirements of the various statutes that impact the Federal coal management program. One comment expressed the opinion that the adoption

of the proposed rulemaking as a final rulemaking would destroy years of effort to integrate coal leasing with land use planning on Federal lands.

Several comments requested that detailed procedures not be moved from the regulations and placed only in the Bureau of Land Management's manuals. One comment suggested that much of what some might call "burdensome" is the paperwork and consultation needed to make sure that the decisionmakers are as well informed as possible.

The Federal coal program management regulations being revised by this final rulemaking contained many detailed internal procedures. This wealth of procedural detail amounted to self-regulation by the Bureau of Land Management. Such self-regulation is more appropriately contained in internal memoranda and manuals.

A few of the comments objected to what they viewed as a less-than-candid explanation of the proposed rulemaking which focused on reducing the burdensome requirements in the existing regulations, while, in fact, making major changes in the regulations. The Department of the Interior strongly disagrees with the view that the proposed rulemaking was misleading in any way.

There are many different aspects to burdensome regulations. The paperwork requirements apply not just to the administrative agency but also to the applicant. Reducing the agency's paperwork should benefit both the applicant and the public by producing quicker decisions and thereby saving time and expense.

The proposed rulemaking resulted from a careful review of the existing regulations by Department of the Interior and Bureau of Land Management personnel with the aim of changing the existing regulations to continue an effective Federal coal management program with less burden on the affected public. Both the proposed rulemaking and this final rulemaking represent the Department of the Interior's best effort to achieve this goal. This final rulemaking continues the principal aims of the 1979 Federal coal management program, including provisions for integration of the coal leasing program with the Bureau's land use planning process and for public participation in the entire process. While the final rulemaking does represent a considerable improvement in the existing regulations, it does so while preserving the essential features of the existing Federal coal management program.

As noted earlier in this preamble, several comments questioned the absence of a new or supplemental program environmental impact statement for the proposed rulemaking. A few of the comments argued that the proposed rulemaking would have substantially greater impacts on the environment than the existing coal program and questioned the conclusion set out in the proposed rulemaking that the proposed rulemaking would not result in any significant changes in the level or types of environmental impacts created by the existing program as determined in the Final Environmental Statement Federal Coal Program (INT FES 79-19) ("Program EIS").

The Program EIS studied seven alternative coal programs, including leasing to satisfy industry's indication of need. This final rulemaking revises the existing program to permit enough leasing to approximate the demand for Federal coal reserves. Although perhaps less than leasing to satisfy industry's indications of need, the changes may result in more leasing than the existing program which is based on production goals.

The Program EIS, in chapter 5, analyzes the environmental impacts of the various alternatives and concludes that the impacts are not significantly different. The Program EIS finds that leasing to satisfy industry's indication of need would not result in significantly greater impacts on a nationwide basis than the preferred alternative. The environmental impact statement does find that leasing to satisfy industry's indication of need would result in greater impacts in the western regions, although it does not describe these increased impacts as significant.

The environmental assessment on the proposed rulemaking has been clarified and strengthened and a new finding of no significant impact has been made. This assessment and finding more clearly recognize that additional impacts may result from this final rulemaking, compared to the existing program, particularly in the western regions, but that these impacts would not be significantly greater than those anticipated from the existing program. These additional impacts are within the impacts assessed and analyzed in the discussion of other alternatives in the Program EIS.

The comments also criticized the deletion by the proposed rulemaking of § 3420.3-4 of the existing regulations which sets the criteria for updating or revising the Program EIS. The Department of the Interior considers this a dispute of form over substance. The comments argue that a deletion of this

provision of the regulations demonstrates the Department's lack of commitment to protection of the environment. The preamble to the proposed rulemaking stated that the provisions had been deleted in order to allow flexibility to respond to changing circumstances.

Regardless of whether this provision is deleted or retained, the Department must revise or update the Program EIS when its assumptions, analyses and conclusions are no longer valid. It is extremely difficult to predict when changing circumstances will require preparation of a new environmental impact statement. The exact procedures necessary for compliance with the National Environmental Policy Act of 1969 at some future time are even more difficult to predict. For these reasons, the Department has decided to delete this provision in the final rulemaking, while recognizing that its obligations under the National Environmental Policy Act remain unchanged.

Specific Comments

Part 3400—Coal Management—General

Subpart 3400—Introduction—General

Approximately half of those commenting on the proposed rulemaking made comments aimed specifically at this subpart. A few comments suggested that the responsibilities section that was deleted by the proposed rulemaking be retained in the regulations. A few of the comments were of the view that the section was helpful in making clear the responsibilities of each of the Department of the Interior bureaus that were involved with the coal leasing program. There were a few comments that supported dropping the section. The section is too detailed, difficult to keep current and unnecessary, since the responsibilities of the Bureau of Land Management, Minerals Management Service and the Office of Surface Mining are detailed in the three-way memorandum of understanding which is available to the public from appropriate offices of all three bureaus.

The definitions section drew a sizable number of comments. The comments suggested that the definitions of each of the bureaus involved in the coal leasing program should be identical or should cross-reference one another to reduce the confusion as to the meaning of various terms. The suggestion that the bureaus cross-reference their definitions to reduce confusion was accepted and has been done to the extent possible in the final rulemaking.

As an example of this cross-referencing, the definition of the term "alluvial valley floor" has been changed

in the final rulemaking to reflect the definition that appears in Chapter VII of Title 30 of the Code of Federal Regulations. This term was the focus of a comment that requested a change in the definition in the existing regulations to place more emphasis on the farming aspect, which the comment indicated was the intent of Congress. The change recommended by the comment was not adopted in the final rulemaking.

Making bidding rights transferable, which was accomplished by the change in the term "certificate of bidding rights" by the proposed rulemaking, was the subject of two comments that expressed the view that transferable bidding rights were bad policy and illegal. The comments were based on the view that the transfer provisions reward past speculators by offering valuable bidding rights in exchange for leases with no value. Further, the comments claimed that the transferable bidding rights also create a new commodity which the Bureau of Land Management is not authorized to manage, the buying and selling of bidding rights. These comments misunderstand the change made by the proposed rulemaking. Bidding rights, which are authorized by statute, are granted in exchange for leases and, in some cases, rights to lease, or investments in the minerals based on the fair market value of those leases, rights to lease or investments. The Bureau does not intend to engage in the buying or selling of bidding rights. The amendment made by the proposed rulemaking and adopted in the final rulemaking merely makes the bidding rights transferable to another party in much the same way that a lease is transferable. Written notification of the transfer would be required to allow the Bureau to keep track of valid certificate holders. The change was supported by one comment.

One comment noted that the term "environmental analysis" was used in the proposed rulemaking in place of "environmental assessment" but no definition was given for the term. The comment asked if the term had the same meaning as the term "environmental assessment", which is defined. The term "environmental analysis" was intended to be a shorthand reference to the procedures to be followed to comply with the National Environmental Policy Act of 1969. Such analysis could result in an environmental assessment or an environmental impact statement, depending on the circumstances of the action under consideration. However, in response to the comment, the change made by the proposed rulemaking is not adopted in the final rulemaking. Full and

complete compliance with the National Environmental Policy Act and its implementation under 40 CFR Parts 1500 to 1508 is the meaning of the term "environmental assessment" as it is used in the final rulemaking.

A few comments requested a change in the definition of the term "substantial legal and financial commitments", as used in the unsuitability process, even though that term had not been addressed in the proposed rulemaking. The comments suggested that the definition should be expanded to include the costs of surface acquisition, environmental assessment and control and fixed capital improvements. While it is acknowledged that it is difficult to arrive at a list of commitments that covers all areas and is satisfactory to everyone, the commitments presently contained in the definition meet those envisioned by the provisions of the Surface Mining Control and Reclamation Act. No change has been made in this definition in the final rulemaking.

One comment wanted the definition of the term "surface management agency" changed to reflect clearly the Federal jurisdiction over Federal coal underlying private surface within the National Grasslands. The definition has not been changed in the final rulemaking because it adequately shows the jurisdiction of the Forest Service in such areas.

In commenting on § 3400.1 of the proposed rulemaking, a comment questioned what stipulations might be imposed on a lease or license in an area found suitable for multiple mineral development. Suitable stipulations would be those to make simultaneous or sequential operations feasible and possible for coal and other minerals.

Several comments raised questions concerning the change made in § 3400.4 by the proposed rulemaking that allows the regional coal team to solicit participation from State and Federal agencies, rather than continuing to require it, as provided in the existing regulations. There are simply too many Federal and State agencies with tangential relations to the Federal coal management program to require contacting all of them. Instead, all regional coal team meetings are open to the public and to all agencies that might wish to participate. In practice, each regional coal team consults with all State and Federal agencies that show a continuing interest in its proceedings or that have relevant expertise. No change from the proposed rulemaking has been made in this section in the final rulemaking.

A sentence has been added by the final rulemaking to § 3400.5, Coal Production Regions, to clarify that these

regions are the areas in which regional coal lease sales will be conducted.

Part 3410—Exploration Licenses

Subpart 3410—Exploration Licenses

Four comments were concerned about the changes made by the proposed rulemaking in § 3410.2-2 regarding the environmental assessment procedure. Special concern was expressed about the deletion of the language on substantial disturbance. The relevant language on substantial disturbance is contained in § 3410.2-2(a)(1) of the final rulemaking. The Department of the Interior recognizes its statutory responsibilities under the National Environmental Policy Act and Federal Coal Leasing Amendments Act and fully intends to implement those laws in the issuance of exploration licenses. In the unlikely event that an environmental impact statement is required prior to the decision on whether or not to issue an exploration license, the language of this final rulemaking has been changed to allow for the preparation of an impact statement. To clarify this, the phrase "or environmental impact statement, if necessary" has been added to § 3410.2-2 of the final rulemaking.

A few comments raised questions about the provisions of § 3410.2-1(c) of the proposed rulemaking which require applicants for exploration licenses to allow all interested parties to participate in the exploration program. One comment went so far as to suggest that the regulations should describe in some detail the rights and obligations of participants. The relative rights and obligations of participants is an area that is best left to negotiation by those participants because they are the best judges of their respective needs and limitations.

Questions were raised about the requirement in § 3410.2-1(c) for publication of the Notice of Invitation. It will be retained. The Notice of Invitation is an administrative means of lessening environmental impacts on Federal coal lands by reducing the amount of repetitive drilling on the same lands by numerous parties.

In addition, the 30-day requirement imposed by § 3410.2-1(c)(2) is adequate time for a person who wishes to participate in an exploration license to apply, and does not impose an undue burden on a licensee. Therefore, the language of § 3410.2-1 as set forth in the proposed rulemaking is adopted in the final rulemaking.

Two comments objected to the proposed deletion of the consultation requirements in §§ 3410.2-4 and 3410.3-1(g) (1) and (2) because it was felt the

deletion would diminish environmental protection. Consultation with other agencies will occur as required by law, and the deletions made by the proposed rulemaking are intended to eliminate redundant language in the regulations. The language of the proposed rulemaking is adopted in the final rulemaking.

Four comments raised questions concerning the administrative procedures used for processing exploration licenses, particularly the requirement that exploration licenses are only valid for two years and may not be extended. The two-year limitation on the term of an exploration license is statutorily set in section 4 of the Federal Coal Leasing Amendments Act. This limitation means that a licensee must reapply for a new license at the end of a two-year term and automatic extensions cannot be granted. To streamline processing time for a new two-year license, renewal procedures may be worked out in advance, but the licensee will have to reapply for a license every two years. The final rulemaking contains the language of the proposed rulemaking for § 3410.3-1(b).

There was a sizable number of comments on the sections of the proposed rulemaking dealing with surface owner protection. Several of the comments took issue with the statements in the preamble to the proposed rulemaking that the existing regulations delegated responsibilities to the surface owner with respect to bond amounts and whether license terms have been met. One comment wanted the regulations to contain language that would protect the licensee from exorbitant surface owner demands.

The Department of the Interior believes that the rights of private surface owners on split estate lands are adequately protected by the changes made by the proposed rulemaking in § 3410.3-4(b). In addition, nothing in the existing regulations prevents the surface owner from taking an active interest in exploration drilling and reclamation activities taking place on his/her lands. The regulations give the authorized officer final authority for determining the sufficiency of the amount of any bond offered for reclamation protection and whether or not the operator has complied with the terms and conditions of the exploration license.

The qualified surface owner provisions of the Surface Mining Control and Reclamation Act apply only to Federal coal leases of lands on which the coal will be mined by methods other than underground techniques. They do not apply to exploration licenses. With

respect to exploration license activities, the rights of private surface owners on split estate lands generally include compensation for damages to crops and improvements. Of course, owners living on the lands where exploration activities occur are concerned that adequate surface protection measures are taken by the licensee. The licensee has an incentive to act in accordance with the terms and conditions of the license. There is a favorable climate for negotiation between the licensee and the surface owner concerning just compensation for damages, with the authorized officer acting only as the impartial final decisionmaker on bonding and bond release. The changes made by the proposed rulemaking to § 3410.3-4(b) are unchanged in the final rulemaking.

A few comments expressed concern about the deletion by the proposed rulemaking of the language in § 3410.4(a) giving the authorized officer authority to require the licensee to collect ground and surface water data. The comments also raised questions about the appropriate time for the collection of the data, the adequacy of the protection given licensee-submitted data and the uses to which the data were being put by the U.S. Government.

The final rulemaking restores paragraph (a) to § 3410.4. The authorized officer has the discretionary authority of requiring hydrology data from applicants. The purpose of this provision is to minimize disturbances to the environment by collecting data for the water resource only once. The authorized officer would only require such data in those specific cases where the data are needed for environmental assessment and tract delineation purposes and where those data are not available from other sources.

Where applicable, the data submitted by a licensee will be treated as proprietary by the Minerals Management Service under the provisions of 43 CFR 2.13 and 30 CFR 211.6. It will be used in the resources information data base.

Three comments noted that there are no incentives for seeking exploration licenses because there is no method for licensees to recover their exploration costs. Several methods of reimbursement were mentioned: exploration licensees could deduct exploration costs from the first production royalty if they are the successful bidder on a coal lease tract; if not the successful bidder on a coal lease tract, the successful bidder would reimburse the exploration licensee for exploration costs; and the licensee could be given the right to obtain the lease by

meeting the high bid and then deducting the exploration costs from the first production royalty.

The major problems with the first two suggested incentives are cost verification and which costs to allow for recovery. An audit of exploration expenses would have to be conducted by the Federal Government to determine which costs were recoverable and to verify those costs. This would result in extra administrative costs for the Federal Government and inconvenience for the licensee. The third suggestion would violate the Federal Coal Leasing Amendments Act because the coal lease sale would not be truly competitive and because the licensee would be getting a right to lease coal. Unfortunately, there appears to be no administratively simple remedy for the problem of inadequate exploration license cost incentives. The suggestions have not been adopted and the final rulemaking contains the language of the proposed rulemaking on this section. However, the Department of the Interior will continue to review this issue in an attempt to derive effective and administratively simple incentives for the private sector to acquire exploration licenses.

Part 3420—Competitive Leasing

Subpart 3420—Competitive Leasing

Several comments were directed at the changes in terminology from "environmental assessment" to "environmental analysis" in the proposed rulemaking, making the point that the term "environmental assessment" was defined in the regulations but that the term "environmental analysis" was not. As stated earlier in this preamble, the term "environmental assessment" or "environmental impact statement" will be used throughout the regulations rather than the term "environmental analysis."

The comments discussed above expressed concern that the changes made by the proposed rulemaking in § 3420.0-2 and at other points in the regulations downgraded environmental protection and land use planning. The revised objectives section is meant to focus more clearly on the objectives of the coal management program, as opposed to the overall objectives of public land management. The objectives of the Bureau of Land Management's land use planning program are set out in 43 CFR Part 1600. Other than the change involving environmental assessment, the final rulemaking adopts the language of the proposed rulemaking for § 3420.0-2.

A few comments objected to the proposed deletion of § 3420.1-1, which

gave general information about the leasing program made by the proposed rulemaking. The material contained in § 3420.1-1 is repetitive of language that appears in other parts of the subpart and it is not needed. The final rulemaking deletes § 3420.1-1.

Four comments objected to the proposed rulemaking's deletion of the section on leasing of lands within known recoverable coal resource areas (section 3420.1-3). There appears to be some misunderstanding on the part of the comments about the identification of known recoverable coal resource areas. Even though known recoverable coal resource areas will continue to be identified, and the identification of the areas will continue to aid land use planning, leasing will no longer be limited to those areas. Leasing will occur on those lands found acceptable in land use planning and in the activity planning process; no other formal land classification action is required by statute. Section 3420.1-3 has been deleted by the final rulemaking.

Several comments strongly favored the change made by the proposed rulemaking in § 3420.1-2 that would provide an opportunity for coal resource information to be brought into the planning process at an early point in time. A small number of comments were concerned that the earlier introduction of coal resource information would bias the planning process, since there is no formal call for other resource and environmental information at the preplanning stage. The Department of the Interior expects that the request for coal resource information will normally be combined with the notice of intent to conduct land use planning or with the issue identification process. At that time, interested parties may also submit information concerning any other resources. Acquiring the coal resource information early will increase the efficiency of the planning process, since planning efforts will be directed to areas where there is interest in development. Some comments indicated that the process should allow the inclusion of additional areas at later stages of the process. This will be possible, but early selection of planning areas is the key to increasing planning efficiency. The need for confidentiality in treatment of information was stressed in two of the comments. Wording has been added to the final rulemaking to provide that proprietary data be sent to the Minerals Management Service for protection of confidentiality.

Wording has also been added to clarify the timing of the call and the role of other surface managing agencies.

Based on the above discussion, the final rulemaking has adopted the language of the proposed rulemaking except for the changes discussed herein.

Two comments suggested quantifying the term "reasonable number" as it applies to tracts for special leasing opportunities in renumbered § 3420.1-3. This is impractical, since the need for special leasing will vary over time and from region to region. The final rulemaking does not quantify the term.

Several comments recommended retention of the standards for judging the adequacy of a land use plan or land use analysis that are being deleted by the proposed rulemaking. The change, which has been included in the final rulemaking, will have no effect on the determination of the validity of a land use plan or land use analysis, since the general standards for adequate land use plans are found in 43 CFR Part 1600 and the specific coal-related components of a land use plan are described in § 3420.1. Therefore, the language of the proposed rulemaking has been adopted in the final rulemaking.

The final rulemaking makes a change in the first sentence of § 3420.1-4 so that it corresponds to section 3(A)(i) of the Federal Coal Leasing Amendments Act. This change is required because the Act states that no coal lease sale may be held until a land use plan or analysis has been completed, which is not consistent with the present wording of the section.

A few comments addressed the deletion by the proposed rulemaking of the § 3420.1-5(e) covering the use of a comprehensive land use plan or land use analysis prepared under 43 CFR Part 1600. The Bureau of Land Management plans to use resource management plans as soon as they are available, but, in some cases, the current planning schedule will not produce resource management plans by December 31, 1984. In those instances, the Bureau will rely on management framework plan amendments that meet the requirements of applicable statutes. No change has been made to this provision in the final rulemaking.

A comment questioned the substitution of the word "estimate" for the word "assessment" in the newly designated paragraph (d) of § 3420.1-4. This change has been retained in the final rulemaking because the word "estimate" better describes the process by which quantities of recoverable coal are ascertained.

Several comments objected to the deletion of the sequential screening process in § 3420.2 by the proposed rulemaking, while two supported the change. The screening process has not

been eliminated. The only change is the deletion of the requirement that the screens be applied sequentially. The Department of the Interior believes that this change allows the authorized officer greater flexibility in determining the timing and sequence of application of the screening factors and the section has, therefore, been retained in the final rulemaking.

The language of § 3420.1-4(d) of the proposed rulemaking, renumbered § 3420.1-4(e) by the final rulemaking, has been revised to clarify which areas will be considered for coal leasing during activity planning. In addition, the language of § 3420.1-4 has been changed by the final rulemaking to clarify the role of surface managing agencies in land use planning. In response to comments, the requirement that multiple land use decisions shall be made during the land use planning process has been reinstated in § 3420.1-4(e)(3) by the final rulemaking.

Several comments indicated that surface owner consultation should be broadened to include all surface owners of split estate lands, not just those who are qualified under the Surface Mining Control and Reclamation Act or who have not given written permission. Everyone, of course, has the right to comment on the land use plan. The intent of this section of the regulations is to gain some indication of how many qualified surface owners object to leasing. No change from the proposed rulemaking has been made in the final rulemaking.

Several comments made objections to the elimination of threshold levels by the proposed rulemaking. Experience has shown that no land use plans to date have eliminated lands from further consideration for coal leasing as a result of the threshold provision of the existing regulations. However, the threshold concept is inherent in multiple use tradeoffs which are required by the existing regulations. Balancing coal development against other resource values and determining whether a level of development will induce adverse and unacceptable effects on these values is the essence of tract ranking and the regional environmental impact statement. This balancing is a threshold analysis.

Several comments objected to changing "may" to "shall" in the proposed rulemaking in renumbered § 3420.1-5. This change was made to eliminate duplication of the hearing requirements in 43 CFR Part 1600 and has no actual effect on the public's right to request a hearing. Elimination of paragraph (b) of this section removes procedural requirements that are more

appropriately part of the Bureau of Land Management's manuals. The Bureau recognizes its obligation under 30 U.S.C. 201(a)(3)(c) to conduct pre-lease sale hearings. However, hearings conducted during the land use planning process should satisfy this requirement. No change has been made in this section of the final rulemaking.

Section 3420.2 was the focus of a relatively large number of comments. Many of these comments supported the concept of leasing to meet the demand for reserves or supported a more market oriented approach. One comment noted that, although it was desirable, it was not possible to lease for reserves because of the diligence requirements of the Federal Coal Leasing Amendments Act. Other comments were opposed to leasing to meet the demand for reserves, for the following reasons: it would decrease competition; prevent a fair return to the public treasury; encourage speculation; and encourage high grading in the mining of coal. Several comments felt that the Secretary of the Interior should be required to consider all the factors; that the mandatory criteria in § 3420.2(b) are hopelessly vague; that no data have been set forth on why the previous procedures were thought to be anti-competitive and inflationary; and that the proposed process depends too much on what industry tells the Department of the Interior.

The various concerns expressed by those comments that were opposed to the proposed changes have been extensively analyzed by the Federal agencies involved in the coal leasing program over several years. The Department of Justice, the Department of Energy, the General Accounting Office and the Council on Wage and Price Stability have all concluded that the Department of the Interior was not proposing to lease enough coal.

It is important to note that the research for the Office of Technology Assessment report referred to by several comments basically addressed the development and production potential of Federal coal lands. The study was never intended to assess the need for additional Federal coal leasing, and it did not make any such assessments. The question of production potential of specific leases, while very important, is only one of the factors to be considered in determining the appropriate level of leasing. It cannot substitute for other needed assessment of competition, inventory requirements, allowance for forecasting uncertainties and other factors.

One comment also stated that leasing for reserves, if not carefully controlled,

might lead to a glut of reserves which has the potential to destroy the value of certain Federal coal reserves to the detriment of specific lessees. The Department of the Interior would like to lease sufficient coal so that the market place can determine which tracts actually go into production. The tracts that go into production will be those with fewer environmental problems and more efficient production possibilities. The effect of this change on specific lessees will depend on the unique attributes of their tracts and their business capabilities relative to tracts held by other lessees or private owners and their business capabilities. Fear of competition by the holders of existing leases is an insufficient reason for not proceeding with new leasing.

A number of comments questioned the meaning of the term "leasing to meet the demand for reserves." Other comments stated that the change in policy might well be given more explicit expression within the wording of the regulation itself. One comment stated that it is essential that the coal States and the Department of the Interior articulate a clear and precise procedure for the implementation of this concept prior to promulgation of the final rulemaking.

On December 17, 1981, the Federal-State Coal Advisory Board met to discuss the changes made by the proposed rulemaking. Board members, particularly the State members, expressed considerable concern over the methods used to estimate the demand for reserves. The Board recommended "a working group or a task force be put together between the States and the Bureau of Land Management to explore the development of the technique for forecasting the demand for reserves." This recommendation was approved by the Under Secretary of the Department of the Interior on February 22, 1982. The Department is in the process of working with the States on this issue. Staff from the Bureau have met with State representatives to collect ideas for a report which will discuss in some detail the concept of leasing levels to meet the demand for reserves.

Some comments suggested adding a phrase to § 3420.2(a)(1) of the proposed rulemaking so that initial leasing levels would be based on the advice of the regional coal team and include factors specified in any guidebook on leasing level methodologies. We feel that this suggestion would tend to make the process redundant since the initial level is only a first cut at a range of numbers to be sent to the regional coal team members to obtain their advice. The

regional coal team is free to give advice at any time; however, it is preferable not to build in a requirement for having a regional coal team meeting prior to having some draft numbers to consider. Any guidebook which might be developed would only elaborate on the factors listed in this rulemaking.

A large number of comments stated that the Department of the Interior should provide for public comment on the initial range of leasing levels and that the public/industry should be allowed to comment further on leasing level methodologies. Opportunity for the public to comment on the initial range of leasing levels will be provided at the regional coal team meeting where the regional coal team members present their findings and recommendations. The notice for the meeting will inform the public of this opportunity and also indicate the initial range is available for review by the public. One comment stated that Indian tribes are brought into the process too late under the proposed rulemaking and that initial leasing levels should be provided to tribes also. The comment expressed the view that the comments of all affected parties should be transmitted to the Secretary. This comment has not been adopted because the regional coal team is a preferable mechanism for receiving public input and incorporating it into the team's transmittal to the Secretary. It is expected that the regional coal teams and any tribes will also be working in close cooperation. The comments of all affected parties will be included in the official records of the regional coal team's actions. Therefore, the language of the proposed rulemaking is adopted in this final rulemaking.

Some comments expressed the view that setting ranges for leasing levels means that environmental analysis will be made more difficult and less precise. This should not be the case since there should be no change in the number of alternatives analyzed in the environmental impact statement, nor in the composition of the alternatives based on the tracts being analyzed. It is important to note that the "range of leasing levels" concept was developed to facilitate the regional coal team's work. It is much easier to identify an array of tracts with total reserves somewhere between 1.5 and 1.9 billion tons than to come up with tracts totaling exactly 1.7 billion tons. This gives the regional coal team more flexibility in selecting tracts. It is also important to recognize that the environmental impact statement evaluation of alternatives relies on specific tracts—not a "range." Thus, the tonnage of the tracts

contained in an alternative is a specific figure which lies somewhere within the range.

One comment was of the opinion that there was inadequate provision in the proposed rulemaking for considering market demand for coal and that the State Director should perform a market analysis in developing initial levels. Changes to the regulations emphasize development of initial leasing levels by assembling a number of pertinent factors from various sources rather than through econometric modeling or statistical market analysis. Of course, if such information exists, the State Director will consider that along with the other inputs.

Several comments stated that the regional coal team should recommend a preferred level, not just alternative levels. This suggestion has not been adopted in the final rulemaking. The role of the regional coal team with respect to leasing levels is twofold: (1) Collect and review data and comments from the State Governors, industry, agencies with coal responsibilities and members of the public; and (2), after analyzing these data and comments, provide the Secretary of the Interior, through the Director, Bureau of Land Management, with reasonable alternative leasing levels. Governors of the affected States may provide comments and recommendations on leasing levels through their representatives on the regional coal team. All such comments and recommendations from the Governors will be transmitted without change to the Secretary. After receiving the regional coal team transmittal, the Secretary consults separately with the Governors of the affected States to obtain their final comments and recommendations before setting the leasing level for that coal production region. The regional coal team will, after the final environmental impact statement has been completed, make a recommendation to the Secretary on the final lease sale schedule.

Some of these same comments also suggested that § 3420.2(a)(5) be rewritten so that a copy of the Bureau of Land Management Director's separate document would be sent to the regional coal team at the same time as it is transmitted to the Secretary of the Interior. This procedure is currently being followed since the regional coal team members are included in the courtesy copy list for such documents.

Several of the comments expressed the opinion that the factors need to be rewritten or issued in a separate rulemaking that defines in more detail how the various factors are to be

measured. This type of technical detail properly belongs in manuals or workbooks. A number of comments provided specific editorial suggestions for rewording § 3420.2 (b) and (c).

The comments were not adopted because they would change the substance and intent of these sections. However, in § 3420.2(c), the reference to the Department of Energy production goals has been changed to U.S. coal production goals. Several comments were of the view that § 3420.2(c) should be changed to require that leasing levels "shall" be based on factors listed in order to provide an objective standard and mandatory language. This suggestion has been adopted in the final rulemaking. Finally, other minor editorial changes have been made in § 3420.2 of the final rulemaking to improve it.

A number of comments stated that the Secretary of the Interior should be guided by the established levels in his final leasing decisions rather than being "not constrained." This suggestion is not practical to implement because the Secretary establishes leasing levels before the environmental impact statement is completed and makes final leasing decisions after consideration of the final environmental impact statement and based on its analysis of the leasing levels. The environmental impact statement may contain new information that would indicate that some alternative other than the proposed action ought to be chosen. In such a case, the Secretary should be free to choose a different set of tracts or a different level of leasing in the final leasing decisions.

One comment received on § 3420.3-1(b) of the proposed rulemaking suggested that the last phrase of the last sentence be changed since land owners frequently change their minds and transfer their interests; however, the existing regulations could lock in a decision of a land owner not to give consent for a period of 10 years. Refusals to consent are not a part of the land use planning process and are not fixed for the life of the land use plans. Refusals are part of the activity planning process for Federal coal leasing. The activity planning process is a continually cycling endeavor. For each activity planning cycle, the surface owner will be contacted for consent, giving him/her the chance to make a new decision on the question of whether or not to give consent. Therefore, § 3427.2(i) has been revised by the final rulemaking to clarify this point. This revision changes the 1979 regulation on the life of refusals to consent.

Another comment stated that surface owner consent had been removed from coal activity planning. This is an erroneous interpretation of the provisions of the proposed rulemaking as the preceding paragraph makes clear. Still another comment asked why the proposed rulemaking deleted the words "shall upon verification" from renumbered § 3420.3-1(b). The change is an attempt to correct an earlier typographical error in the word "shall." The final rulemaking makes no changes in this section.

Several comments stated that no public input would be involved in the establishment of coal lease sale schedules. This interpretation is incorrect because the regional coal team will discuss and vote on schedules that will be recommended to the Secretary of the Interior in the public meetings held by the regional coal teams. Public comment will be accepted at the public meetings on all issues discussed. No change has been made on this subject in the final rulemaking.

A few comments were received concerning the expression of leasing and industry interests. The comments alleged that the coal companies are now running the coal leasing program and that the input of the regional coal leasing teams and other governmental bodies is diminished. This comment is not well taken because the regional coal team will, through coordination with the various public bodies which have representation on the team, suggest which tracts will be considered and recommend how they will be delineated. All interested parties will have an opportunity to comment to the regional coal team and to provide recommendations. The suggested changes were not adopted in the final rulemaking.

One comment expressed the opinion that the call for expressions of interest contained in § 3420.3-2 of the proposed rulemaking should be based on a Secretarial determination that additional leasing may be needed to meet coal needs. One of the factors to be considered by the Secretary of the Interior in establishing leasing levels is the result of the call for expressions of interest. Therefore, the call should be made following the completion of a land use plan update in order to provide part of the information needed by the Secretary to determine whether additional leasing is needed. The final rulemaking contains the language of the proposed rulemaking.

One comment expressed the view that the retention of a call for expressions of interest may be redundant in view of the

proposed "call for coal resource information." The earlier call for information serves to alert the public to the fact that an area is being studied for possible designation as acceptable for further consideration for coal leasing. The information requested is used in the land use planning process. The purpose of the call is to obtain as much data as possible about the resources and to identify the issues to be addressed in the land use plan. The call for expressions of interest comes after land use planning is completed, which may be one or more years later. At that time, much more specific information is needed in order to delineate tracts. The final rulemaking contains the language of the proposed rulemaking.

A comment suggested deletion of the requirement that calls for expressions of interest to be made after land use planning and the establishment of "areas acceptable for further consideration." The comment has not been adopted because the principle of completing land use planning prior to beginning activity planning as established in the 1979 regulations should be retained. Another issue raised by the same comment was a desire that the 60-day time period allowed for expressions of interest be retained. This is not an appropriate requirement for the regulations, and it has not been adopted in the final rulemaking, because circumstances surrounding the time for filing expressions of interest will differ among the various coal regions.

One comment stated that the Department of the Interior should allow data which are considered proprietary to be submitted as part of an expression of interest, but to consider it confidential. The inclusion of proprietary or confidential data in an expression of interest is not desirable because it is reviewed by the regional coal teams and may be subject to public review. Proprietary information considered critical to the evaluation of resource quality and quantity should be provided separately to the Department using other established methods which allow for the proper protection of proprietary data. No change has been made in this area by the final rulemaking.

Several comments felt that language should be retained in the final rulemaking which gives the regional coal teams authority to determine the location, priority and timing of tract delineation and site specific environmental inventory and analysis. The concerns of this comment are fully addressed in the new language that the proposed and final rulemakings added

to § 3420.3-1(c) which lists the responsibilities of the regional coal team.

Several comments noted that the opportunity for public comment on tract delineation and ranking prior to the completion of the draft environmental impact statement appeared to have been eliminated by the proposed rulemaking. The proposed rulemaking anticipated that an opportunity for the public to comment on these subjects would occur at the public meetings held by the regional coal teams as it has in the past. This issue has been further clarified by language adopted in the final rulemaking.

A number of comments were received on the proposed rulemaking's streamlining of the language concerning ranking factors. Ranking factors will continue to be developed by the regional coal teams during public meetings and will be published in the regional environmental impact statement for public review and comment. In this same area, other comments expressed concern about public participation in tract ranking. Public participation in tract ranking will be provided through the public forum provided by the regional coal team activities where public comment is solicited on each step of the process. No change has been made on this subject by the final rulemaking.

Another comment suggested that ranking in classes of high, medium or low seems unnecessary. This comment has not been adopted in the final rulemaking because some of the tracts under consideration may be less desirable due to environmental, socioeconomic or coal quality factors. This reflects a checks and balances system which allows tradeoffs to occur with one factor not overpowering other significant factors in a given region.

A comment on the involvement of Indian tribes in the coal management program stated that they should be consulted. The policy of the Department of the Interior is to consult with the tribes when they may be directly affected by a leasing action. Tribes are invited to attend all regional coal team meetings and are specifically consulted on leasing levels and lease sale schedules. No change in tribal consultation has been made in the final rulemaking.

A comment made the suggestion that tract ranking should occur prior to the establishment of the leasing level in the process. This suggestion is not generally feasible since the process is designed to allow the regional coal team to have the results of the Secretary's decision on the leasing level in order to select tracts to

meet that level. Tract ranking and selection are usually done at the same regional coal team meeting. However, ranking may occur prior to the establishment of the leasing level, but the final rulemaking does not require it. This suggestion has not been adopted in the final rulemaking.

Several comments urged that the regional coal team be required to identify alternative tract combinations for the regional lease sale environmental impact statement. Section 3420.3-4(b)(1) has been changed in the final rulemaking to provide that the regional coal team must identify a tract combination for each reasonable alternative leasing level. The final rulemaking also provides that the team may identify alternative tract combinations within any leasing level. This has been left to the team's discretion because it is best able, after analyzing the tracts available at any given time, to determine whether alternative tract selections within a leasing level are appropriate. It is impossible to predict the various situations each regional coal team might face. Therefore, the teams are given flexibility to adjust their selection accordingly.

Some comments suggested that the words "cumulative" and "bypass" be retained in § 3420.3-4(b)(2) of the final rulemaking. Cumulative impacts are determined as a result of the regional environmental impact statement analysis which does not take place until after the ranking and selection stage. Only the site specific impact data are available at this point in the process. Therefore, the language of the proposed rulemaking has been retained in the final rulemaking. The regional coal team can also take measures to avoid any type of potential future emergency leasing, whether for bypass or some other reason. The intent is to provide the regional coal team necessary leeway in tract selection in order to keep the integrity of the regional leasing process from being compromised by the emergency leasing process.

Several comments requested a variety of changes in § 3420.3-4(c) of the regulations. The final rulemaking has been changed to reflect that the proposed action in the regional lease sale environmental impact statement will be a combination of tracts approximating the leasing level established by the Secretary of the Interior under § 3420.2, and that the alternatives analyzed in the statement will include other reasonable combinations of tracts identified in the selection process or subsequent review. Specifically, the impact statement must

analyze all tract combinations selected by the regional coal team for the various leasing levels.

The responsibility for preparing the environmental impact statement is set out in the final rulemaking, as one comment requested. The impact statement must analyze, among other things, the cumulative impacts of the proposed coal leasing level on the region. This analysis would include such aspects as the timing of production impacts, so that it is not necessary to specify sale schedules as alternatives, as one comment requested. Also, interregional cumulative impacts are the concern of the Federal Coal Management Program Environmental Impact Statement, not the regional environmental impact statement, as one comment suggested.

Several comments criticized the deletion by the proposed rulemaking of the regional lease sale environmental impact statement updating requirement. The Department of the Interior has determined that, for purposes of clarity, this requirement should be included in the final rulemaking. However, as more lands are leased or become available for leasing, it is imprudent to require four-year leasing cycles. The final rulemaking has been amended to require revision or repetition of the tract ranking, selection and scheduling process and the regional environmental impact statement as needed rather than on a regular basis. The final rulemaking changes the wording in the last sentence of § 3420.3-4(h) to delete the word "preliminary" since this term is no longer used in tract delineation and basically to restore the language of the existing regulations, except for changing leasing targets to leasing levels.

A few comments stated that consultation with the Governor(s) should occur upon consideration of any revisions to the lease sale decisions. These comments did not result in a change in the final rulemaking because this consultation is provided for in § 3420.4-3.

Comments were received on the reduced consultation period for the Governors in § 3420.4-3(a) of the proposed rulemaking. No change has been made on this point in the final rulemaking because 30 days should be sufficient since most of the consultations will be done orally. In this same vein, the comments raised objections to the reduction of the consultation period for Indian tribes from 60 days to 30 days by the proposed rulemaking. The final rulemaking has not been changed because, as discussed above, the consultation process will be a direct

process and 30 days should be a sufficient period.

One comment requested that § 3420.6-2 of the existing regulations be retained in the final rulemaking. This suggestion has not been adopted in the final rulemaking because there will be publication of descriptions of the tracts and a call for surface owner agreements much earlier in the process, as well as when the sale notice is published.

Subpart 3422—Lease Sales

Subpart 3422 drew a variety of comments. Some of the comments objected to the deletion by the proposed rulemaking of the requirement that the Geological Survey (now Minerals Management Service) determine maximum economic recovery prior to lease sale. Other comments supported this deletion. The Department of the Interior, in deciding to include this deletion in the final rulemaking, notes that the Minerals Management Service will continue to solicit public comments on maximum economic recovery (as well as on fair market value of tracts prior to a sale) for at least 30 days prior to publication of the sale notice, and that after a high bidder has been identified, the Minerals Management Service will make a preliminary determination of maximum economic recovery in compliance with section 3 of the Federal Coal Leasing Amendments Act (30 U.S.C. 201(a)(3)(C)). In further compliance with the Federal Coal Leasing Amendments Act, the Minerals Management Service will make a final determination of maximum economic recovery in conjunction with the review and approval of the resource recovery and protection plan for the lease.

Two comments were of the opinion that all economic information which might affect the determination of fair market value should be available prior to the sale for public review and comment. All non-proprietary data are available in the appropriate offices of the Minerals Management Service for public review. Therefore, no change has been made in this area in the final rulemaking.

One comment felt that the language of the proposed rulemaking in § 3422.1 fails to indicate that anyone will evaluate fair market value and maximum economic recovery. As noted above, the Minerals Management Service will evaluate maximum economic recovery, as stated in § 3422.3-2(b) of the final rulemaking, and a sale panel will evaluate the high bid and whether it equals or exceeds fair market value. One comment felt that no written findings are required by the proposed rulemaking and that no objective standards are in place to judge

the adequacy of the bids. The final rulemaking makes a change in § 3422.3-2(b) that requires the sale panel's recommendation and the authorized officer's decision to be in writing and entered in the lease case file maintained by the Bureau of Land Management. The objective standards for fair market value are set forth in 43 CFR 3400.0-5(n). Other objective standards include the bidder qualifications set forth in 43 CFR Subpart 3472.

One comment asked that lease stipulations be released prior to the Department of the Interior's solicitation of comments on fair market value. Two comments asked that the notice of sale and lease terms and conditions be posted at least 60 days prior to the sale. Lease stipulations will continue to be released contemporaneously with the detailed statement of lease terms under § 3422.2, at least 30 days prior to the scheduled sale. Thirty days is an adequate period to assess the cost of complying with stipulations. Furthermore, the progress of activity planning leading to the sale gives a very strong indication of the nature of stipulations to be attached to a lease. The tract profiles will indicate issues that may lead to stipulations and the environmental impact statement will discuss specific mitigating measures that will likely be treated by stipulations. The final rulemaking makes no changes in this area.

One comment suggested that the regulations include a minimum period for comments. In rejecting this suggestion, the Department of the Interior notes that the comment period under § 3422.1 begins at least 30 days prior to publication of the sale notice, which in turn must be posted at least 30 days prior to the lease sale. Furthermore, as a general practice, the Minerals Management Service begins the solicitation of comments on fair market value and maximum economic recovery shortly after publication of the final regional lease sale environmental impact statement, to ensure adequate time for interested parties to comment.

Many comments supported § 3422.2(b)(1) of the proposed rulemaking which allows the publication of "minimum acceptable bids" to be discretionary, while some comments strongly opposed any change in the regulations that would not require the publication of "minimum acceptable bids." One comment indicated the change was unclear as to whether publication was discretionary or not, given the preamble explanation of the proposed rulemaking. Those opposed to the change felt that failure to publish "minimum acceptable bids" prior to a

lease sale, and the deferring of judgment of acceptability until after the sale, would result in the United States not being assured of a proper return for the sale of its resources.

In response to the comments discussed above and after a detailed review of the history of this subpart, the Department of the Interior has changed the language of the final rulemaking to require publication of a "minimum bid" with the Notice of Sale. The term "minimum bid" avoids confusion over whether the "minimum acceptable bid" required by the existing regulations in the Notice of Sale for each tract was acceptable as fair market value for leasing or only acceptable as an entry level for having the bid considered by the sale panel. A "minimum acceptable bid" was that required for the bid to be considered at all by the sale panel; fair market value has always been that which the high bid must meet or exceed before a lease can be awarded.

The distinction between minimum acceptable bids and pre-sale estimates of fair market value has been blurred because practices were followed which essentially equated the two. Nothing in the existing regulations requires this practice, just as nothing in them prohibits a policy of announcing minimum acceptable bids as entry bids only, reserving determination of fair market value until after the sale.

The preamble to the proposed rulemaking was somewhat unclear as to whether or not the proposed change, which would make announcement of "minimum bids" discretionary, meant that in all cases fair market value would be determined after lease sale. This final rulemaking clarifies that in all cases "minimum bids" will be published prior to lease sale; it does not, however, preclude decisions to equate the "minimum bid" with pre-sale estimates of fair market value, if such an estimate is made.

The competitive interest at lease sales is a good indicator of fair market value. For instance, fair market value is likely to be reflected in a high bid that results from bidding among a large number of bidders. In other instances, where, for example, only one bid is expected on a tract, it may be appropriate for the Federal Government to estimate fair market value prior to the lease sale and to publish this value as the "minimum bid" in the Notice of Sale. The final rulemaking preserves the Department of the Interior's discretionary right to use any method of establishing minimum bids, including those described above.

The concerns about the United States not receiving fair market value for the

sale of its resources are without merit. Both the Federal Coal Leasing Amendments Act and this final rulemaking require the Department of the Interior to receive a fair market return for the public resources sold.

Three comments suggested that the Department of the Interior not make any determination of fair market value, either prior to or after the lease sale, and instead, accept in all cases any bid above the existing regulatory minimum of \$25 per acre. Such a process would be an abrogation of the Secretary of the Interior's statutory responsibility to receive fair market value, which must be judged on a tract-by-tract basis. This suggestion was not adopted in the final rulemaking.

The minimum bonus bid for consideration in a Federal coal lease sale has been raised from not less than \$25 per acre to not less than \$100 per acre by this final rulemaking. This action could be taken as a matter of policy under the existing regulations, simply by using no amount less than \$100 per acre in future sale notices, but this policy should be and is codified in final rulemaking. This new policy is fully consistent with the law and in no way affects previous decisions by the Department to award leases based on high bids received that were below \$100 per acre inasmuch as those bids passed the test for fair market value. Setting the new minimum bid level establishes the policy of leasing the higher value tracts first. If tracts receive bids below \$100 per acre, they will not be leased.

One comment proposed that bonuses be deductible from the first royalty payment. This suggestion merits further study and may be the subject of a further rulemaking; no change in the current process of separate and distinguishable payment of bonuses and royalties is being made in this final rulemaking.

One comment asked whether, in the case of fair market value determinations after lease sales, high bonus bids could be raised or lowered to meet the post-sale determination. Such a process would violate the requirements of the Federal Coal Leasing Amendments Act that leases be awarded by competitive bidding, and thus no change is made by the final rulemaking.

One comment suggested that the changes made by the proposed rulemaking with respect to fair market value and maximum economic recovery are direct violations of the requirements of the Federal Coal Leasing Amendments Act. The Department of the Interior strongly disagrees; no bid will be accepted which is less than fair market value, as determined by the

Secretary. The Federal Coal Leasing Amendments Act does not require fair market value to be calculated prior to lease sale. Rather, this determination must be made before a bid is accepted. Similarly, the Federal Coal Leasing Amendments Act requires that the Secretary evaluate maximum economic recovery only prior to lease issuance, not prior to sale. The Act states that this evaluation shall not prohibit lease issuance. As required by the statute, no mining will be permitted which does not achieve maximum economic recovery of the coal within the tract.

One comment noted that because the Department of Energy's authority to establish bidding systems for leasable minerals (including coal) was repealed in December 1981, the Department of the Interior ought now to set bidding systems. The Department agrees with this recommendation and § 3422.3-1 has been modified in the final rulemaking to indicate the transfer of rulemaking authority from the Department of Energy to the Department of the Interior with respect to bidding systems. By this rulemaking, the Department may use cash bonus bidding with fixed royalties and any other bidding system adopted through future rulemaking procedures. A cash bonus bidding, fixed royalty system for coal had been adopted by the Department of Energy prior to the repeal of its authority to establish bidding systems.

Two comments suggested that high bidders be allowed up to three working days after a lease sale in which to submit the balances required to bring their one-fifth sealed bids up to one-fifth of their final high bids. The existing regulations call for each high bidder to make up any difference at the close of the bidding. Under the existing regulations, oral bidding was permitted at the discretion of the authorized office. The final rulemaking removes that discretion; all Federal coal lease auctions will be conducted using sealed bidding only. Elimination of the use of oral bidding will, it is hoped, result in bidding that more accurately reflects a lease sale participant's perception of actual tract value.

Several comments agreed with the deletion of § 3422.3-2 on intertract bidding, and suggested that intertract bidding is an inappropriate sale procedure. One comment remarked that it is especially important to maintain intertract bidding as an option, given the changes made by the proposed rulemaking in § 3420.2 relating to leasing levels. The Department of the Interior agrees that intertract bidding is not, strictly speaking, a bidding system, but is a sale procedure. The Department will

maintain the right under this final rulemaking to use intertract bidding in appropriate situations.

One comment requested that intertract bidding procedures be specified in the regulations. The Department of the Interior prefers to specify the details of both the bidding system and the sale procedure as a part of the notice and detailed statement announcing a lease sale. The comment was not adopted in the final rulemaking.

One comment expressed concern that while intertract bidding is maintained as a sale procedure, its deletion as a bidding system removed the requirement that there be a public interest determination prior to its use. While the Department of the Interior does not believe such a determination is specifically required, a recommendation to use intertract bidding will generally originate with a regional coal team. Its recommendations are made after public meetings and consideration of the public interest.

Two comments supported the elimination of the detailed listing of the Department of the Justice's requirements for data from the high bidder regarding antitrust aspects of lease issuance. Two other comments objected to the proposed elimination. In adopting the change in the final rulemaking, the Department of the Interior notes that the Department of Justice will continue to specify the data necessary for its review and that this procedure and the change in the regulations have been approved by the Department of Justice. The detailed list of data will be available at the Bureau of Land Management State offices. This revision allows the Bureau to avoid making continual changes in these regulations because they will not have to be revised each time the Department of Justice makes a change in the data it requires.

Three comments suggested that the standard for deciding when one-half of the leases are offered for sale by deferred bonus bidding be based on a per sale basis rather than a per year basis. This suggestion has been rejected in the final rulemaking; the yearly standard is less burdensome administratively.

One comment expressed concern that the changes made by the proposed rulemaking in § 3422.4(a) would require the successful bidder to pay only his/her proportionate share of the cost of publishing the notice of sale, instead of the full share that is implied in the existing regulations. The concern is unfounded and the change has been adopted in the final rulemaking. The phrase "proportionate share" is

intended to clarify the situation where one sale notice announces the auction of several tracts. In such situations, each successful bidder pays only his/her fair share of the cost of publication.

One comment wanted to know the circumstances under which a deposit submitted with a bid would be refunded. The circumstances would be situations where the Department of the Interior is unable to issue a lease for reasons beyond the control of the high bidder. An example might be the erroneous verification of surface owner consent resulting in a lack of authority to lease the tract or a portion of it. Section 3422.4(a) has been revised in this final rulemaking to include circumstances under which a bid deposit may be forfeited.

One comment suggested that bidding competition would be enhanced if data required from an exploration license issued under subpart 3410 were not protected from general dissemination. While it is clear that the availability of equal information for all bidders would benefit competitive allocation of resources, any potential bidder has the opportunity to participate in an exploration program conducted under a Federal license. The only requirement for such participation is that all participants pay their proportionate share of exploration activity costs.

Subpart 3425—Leasing on Application

Several comments expressed opposition to the proposed rulemaking's elimination from § 3425.1-4 of the two-year production requirement for mining operations prior to applying for an emergency lease; retention of the maximum tonnage (8 years of reserves) allowed under any emergency lease; and elimination of paragraph (c) which allows only one emergency lease at a time for the same mining operation. An equal number of comments supported these changes.

Those comments opposing the elimination of the two-year mining operation requirements did so on the basis that it would encourage speculation, i.e., the opening of a mine without sufficient reserves, applying for permits to mine on adjacent State lands with the intention of tying up, but not mining, reserves. The supporters of this change cited the maximum economic recovery provisions of the Federal Coal Leasing Amendments Act as support for the change.

The elimination of the two-year requirement will not encourage speculation, but rather will allow legitimate operators access to Federal coal where there is a need, particularly in situations where the coal would have

to be mined early in the sequence of operations or else would be bypassed. No operator who opened a mine with insufficient reserves in the expectation of acquiring a Federal lease would be considered to have a legitimate need for the coal.

Three comments expressed concern about the phrase "annual level of production on the date of application" in § 3425.1-4(a)(1), the emergency leasing qualifications. One comment expressed the view that the method of calculating reserves would lead to speculation by parties located on lands adjacent to Federal coal who could obtain options or letters of intent to produce large tonnages of coal, and then obtain a Federal emergency coal lease based on the options or letters of intent. This comment's concern is unfounded because the term "contract," as it is used in this subsection, does not include options or letters of intent to produce coal for emergency leasing purposes. No lease would be issued based on such documents. Furthermore, these regulations require that contracts must have been executed prior to July 19, 1979.

Two comments expressed concern about situations in which the emergency lease applicant has no prior annual level of production. In those cases, production data from a similar mining operation could be used in calculating lease reserves. These same comments were concerned about situations in which lessees have annual production levels from their producing mines but have contracted for higher levels than their current production levels, and requested assurance that the higher post-1979 contracted levels would be used to calculate the recoverable reserves under lease. The regulations do not allow leasing the higher level under these circumstances. The purpose of the emergency leasing program is twofold: to prevent the bypass of Federal coal and to allow operators in Federal coal production regions to maintain production levels until an appropriate regional lease sale can be held. The revised language contained in the proposed rulemaking inadvertently allowed lessees to enter into contracts after July 19, 1979, for higher levels than their annual production levels prior to submitting applications for emergency lease sales. This provision had the potential for defeating the purpose of the emergency leasing system. The final rulemaking amends the language of § 3425.1-4 to reflect this purpose.

Four comments objected to the retention of the eight-year reserve ceiling on emergency leases. They cited possible constraints on underground

mining. Experience to date has shown the eight-year reserve number to be reasonable. The eight-year reserve ceiling has been retained in the final rulemaking because leasing large numbers of years of reserves under the emergency leasing system could compromise the regional leasing process. By the time eight years of reserves are exhausted, there should have been at least one regional lease sale in which life-of-mine leasing would be contemplated for any such mines.

One of the comments requested that emergency leases' diligence requirements be determined on a case-by-case basis. The final rulemaking has not adopted this request. All leases issued since the effective date of the Federal Coal Leasing Amendments Act are required to meet the diligent development requirements of the Act.

The elimination of paragraph (c) of § 3425.1-4 was opposed by four comments and supported by eight. Those comments that supported the elimination were of the opinion that removing the limitation of only one emergency lease at a time for the same mining operation will reduce the waste of Federal coal resources and provide needed flexibility in the leasing procedures. Those comments that objected to the elimination of paragraph (c) did so on the basis that its elimination will encourage abuses of the emergency leasing process and circumvention of the regional leasing program. The final rulemaking deletes paragraph (c) because there are sufficient safeguards built into the emergency leasing system to prevent the abuses raised in the comments.

A review of the comments indicates some confusion over the difference between emergency leasing and leasing outside coal production regions. Emergency leasing occurs in designated coal production regions where there is a need for coal prior to the next regional coal leasing sale. Outside of designated coal production regions, the existence of an "emergency" is irrelevant because all leasing is done in response to applications. Leasing outside designated coal production regions is accomplished under § 3425.1-5, which has been revised in the final rulemaking to clarify this point.

Section 3425.2 has been amended to clarify that no coal lease may be offered for sale until coal lands have been included in a land use plan or analysis.

Four comments recommended that States or State Governors be notified of the receipt and rejection of applications for coal lease sales and that Governors be consulted prior to the issuance of a

lease under an application. Under § 3425.4(a)(2), Governors are consulted prior to the holding of coal lease sales. Information on the status of lease applications is available upon request from the various State offices of the Bureau of Land Management. Governors may request such information directly or through their participation on the regional coal teams.

Two comments requested clarification of the phrase "compromise the regional leasing process" as it appears in § 3425.1-8(a) of the proposed rulemaking. The regional lease sale process includes a thorough ranking of each tract relative to other tracts. The regional process also allows for leasing enough reserves to provide for the life of the mine. Any extensive use of emergency leasing would adversely affect the regional lease sale process by removing tracts from the regional lease process of subjecting potential lease tracts to careful ranking and selection and more frequent public participation. Therefore, in coal production regions, applications for emergency lease sales would be rejected if the coal lands applied for would be offered for regional leasing at approximately the same time as they would be offered for emergency leasing.

A few comments objected to the changes made by the proposed rulemaking in § 3425.3 because of the view that the elimination of the language containing the detailed content of environmental assessments will dilute the environmental considerations given the coal lands applied for and will eliminate standards for public judgment on the adequacy of the environmental assessment. The final rulemaking makes no change on this point because the regulations reference the regulations of the Council on Environmental Quality which contain standards for environmental assessments and environmental impact statements. This change does not dilute the environmental review given the coal lands under consideration for leasing nor does it affect the Department of the Interior's responsibility under the National Environmental Policy Act. The interested public will be able to obtain and comment on all environmental assessments and be able to judge their adequacy.

The comments indicate some confusion over the difference between the terms "environmental analysis" and "environmental assessment." The product of the process of environmental analysis is either an environmental assessment or an environmental impact statement. In order to eliminate as much

confusion as possible, the final rulemaking changes the term "environmental analysis" to either "environmental assessment" or "environmental impact statement," as appropriate.

The final rulemaking adds a new section, § 3425.1-9, which was inadvertently omitted from the proposed rulemaking. The new section clarifies a procedural question which has arisen during the processing of lease applications and allows modification of an application area where required or appropriate.

Several comments raised questions about the changes made by the proposed rulemaking in § 3425.4, principally the elimination of the requirement that all bidders at emergency lease sales meet the qualifications of the applicant. Two comments supported this elimination, while eleven opposed it. The support of the change was based on the premise that opening the emergency lease sale process "to all comers" would make such lease sales truly competitive. Those objecting to the change did so on the basis that the elimination of the special bidder qualifications for emergency lease sales would encourage speculation and could artificially inflate the price of coal or prevent the coal from being mined at all. The Department of the Interior has a statutory responsibility to lease coal competitively, whether or not an operator appears to be the only operator in a position to mine economically the coal covered by the application. The elimination of § 3425.4(b)(2) is an attempt by the Department to eliminate the special protection from competition afforded emergency lease applicants by the restrictive special bidder qualifications in the existing regulations. Therefore, the final rulemaking deletes the special emergency bidder qualifications at emergency sales.

Subpart 3427—Split Estate Leasing

Several of the comments on subpart 3427 stated that the revisions made by the proposed rulemaking reduce the protection afforded the qualified surface owner under the Surface Mining Control and Reclamation Act. The proposed changes are intended to clarify the requirements for surface owner consent. The proposed changes do not diminish the rights of qualified surface owners in any way. Federal coal lands held by surface owners who demonstrate that they are qualified under the Surface Mining Control and Reclamation Act and 43 CFR 3400.0-5(gg) and who refuse to grant consent will not be offered for lease sale.

Two comments objected to the revision made by the proposed rulemaking in § 3425.0-7 that changed the purpose of this subpart from setting out the protection offered qualified surface owners to setting out the requirements for submission of surface owner consents. In response to these comments, the final rulemaking revises the section to include both purposes. The final rulemaking more accurately reflects the content of the subpart.

Three comments were received on the proposed deletion of § 3425.2(d) which gives priority consideration to lands covered by surface owner consents over lands that are not so covered during the regional activity planning process. One comment supported the deletion and the others opposed it. The final rulemaking makes the deletion made by the proposed rulemaking so that tracts would not be required to be unnecessarily and prematurely eliminated during the coal activity planning process just because consents have not been received at that time. The Bureau of Land Management would retain the discretion to consider further or to eliminate such tracts, as appropriate.

Two comments on the changes made by the proposed rulemaking to § 3427.2(d) objected to the deletion of the 15-day period for verification of consents. This time limit constituted unnecessary self-regulation; no useful purpose is served by the Bureau of Land Management requiring itself to act in 15 days where failure to do so would not detrimentally affect the public. A third comment questioned the meaning of the proposed § 3427.2(d)(1) (i) and (ii). A consent that is obtained on or after August 3, 1977, the date of the enactment of the Surface Mining Control and Reclamation Act, must meet the criteria of this section or the consent will not suffice for the Bureau to hold a lease sale for the lands covered by the consent. Consents obtained before August 3, 1977, need not meet these criteria in order for the Bureau to proceed to sell the tracts. Lands covered by consents not meeting the criteria of this section will not be included in a lease sale unless and until transferable consents have been submitted. One comment questioned the meaning of the word "may" in § 3427.2(d)(1). This paragraph is intended to provide that the consent will be considered transferable to the successful bidder only if it provides that the successful bidder assumes the obligation to reimburse the consent holder for all money previously paid by the consent holder to the grantor under the consent

contract. The word "may" has been replaced with the word "shall" in the final rulemaking to clarify the meaning of this section.

Eight comments addressed § 3427.2(j) of the proposed rulemaking which provides that a surface owner would be considered unqualified if he/she refused to provide information regarding qualifications to the authorized officer upon request. All but one comment raised strong objections to this paragraph, considering it a violation of a right granted by statute. The intention of this paragraph in the proposed rulemaking was to suggest that qualified surface owners bear some responsibility to aid the Department of the Interior in establishing whether or not they meet the statutory requirements and thus whether or not the tracts may be offered for lease. If the surface owner does not want his/her lands leased, submitting evidence of qualifications and then refusing to grant consent or submitting a statement of refusal to consent will ensure that his/her lands will not be leased. Refusal to submit evidence of qualifications would benefit only those not qualified for the protection of the Surface Mining Control and Reclamation Act and who may wish to block the United States from leasing coal reserved to it under the privately held surface. The paragraph is intended to prevent such action.

Section 3427.2(j) has been revised in the final rulemaking to indicate that the Bureau of Land Management shares some responsibility for determining surface owner qualifications and will operate under a presumption of nonqualification only after it has failed to obtain evidence of qualifications both from the surface owner and from its own investigations. Also, the Bureau will notify any surface owner who is presumed unqualified under this paragraph of the decision in writing and provide the surface owner with an opportunity to appeal the decision.

Sections 3427.1, 3427.2(a), 3427.2(f), 3427.2(g), 3427(i) and 3427.4 were revised and published as a final rulemaking on March 3, 1982 (47 FR 9008). Those provisions are repeated here only insofar as they have been renumbered or amended to be consistent with this final rulemaking. Comments received on these sections were addressed in the preamble for that final rulemaking and are not repeated here.

Part 3430—Noncompetitive Leases

Subpart 3430—Preference Right Leases

There was a large number of comments on subpart 3430, with strong feelings being expressed about the

requirement that a preference right lease applicant meet the standards of statutes passed since the dates his/her preference right lease applications were filed. The preamble to the rulemaking of July 19, 1979 (44 FR 42584), stated in full the background of the decisions concerning the rights of preference right lease applicants and the Department of the Interior's authority and responsibility in imposing terms and conditions in adjudicating and issuing these leases. To summarize the information in the 1979 preamble: preference right lease applicants have "valid existing rights" to have their lease applications adjudicated in reasonable time periods and to obtain leases if, under the Department's regulations, they have discovered coal in commercial quantities within the terms of the prospecting permit and if all other requirements are met. Preference right lease applicants have no rights to any particular set of lease terms or conditions, as decided by the courts in *Utah International, Inc. v. Andrus*, 488 F. Supp. 962 (D. Utah 1979); *Natural Resources Defense Council v. Berkland*, 609 F. 2d 553 (D.C. Cir. 1979); several Interior decisions; and several phosphate preference right leasing court cases. In *NRDC v. Berkland*, the court ruled that preference right lease applicants have a right to a coal lease if they can demonstrate the discovery of coal in commercial quantities. The court also ruled that the National Environmental Policy Act applies to the action of issuing a preference right lease.

There were seven comments on the subject of commercial quantities determinations. Most comments were against the "prudent man marketability" standard. The basis of the "prudent man marketability" standard is explained in the earlier May 7, 1976, final rulemaking (41 FR 18845). This standard and the commercial quantities definition which reflects it are retained in this final rulemaking.

Five comments on § 3430.2-1 expressed concern that the lessened information required from preference right lease applicants would result in inadequate environmental analysis and, consequently, environmental degradation. One comment unequivocally supported the lessened requirements for information and two comments believed that the information required was too burdensome, that no environmental information should be required of the applicant.

The main information requirement deleted from § 3420.2-1 by the proposed rulemaking is the requirement that demonstrated reserves be made by coal

bed. The final rulemaking adopts this deletion (as well as other changes made in § 3420.2-1) because the requirement did not appear in the May 1976 rulemaking upheld in *NRDC v. Berkland*.

Several comments objected to the changes made by the proposed rulemaking in § 3430.3-2 on the basis that they would lessen or eliminate the environmental protection afforded by the specific provisions of the 1979 rulemaking. The environmental assessments will contain the information deleted from the regulations by the proposed rulemaking, with specific instructions for environmental procedures and format being contained in internal memoranda and manuals. These memoranda and manuals will be available to the public upon request from any appropriate Bureau of Land Management office. As stated earlier, the Department of the Interior fully intends to meet its responsibilities under the National Environmental Policy Act, other environmental legislation and the applicable implementing regulations.

As discussed earlier in this preamble, confusion has arisen over the difference between the terms "environmental analysis" and "environmental assessment" as used in § 3430.3-2. To avoid confusion, the terms "environmental assessment" and "environmental impact statement" have been used in this final rulemaking when applicable.

Three comments suggested that a new paragraph be added to § 3430.3-2 to require consultation with State Governors on environmental procedures. The internal Bureau of Land Management procedures require consultation with State Governors by having environmental assessments or environmental impact statements sent to them for comments. This requirement is not included in the final rulemaking because there is no need to place this internal requirement in regulation form.

Five comments requested that specific reference to the regional coal teams be made in subpart 3430 to correspond to the description of their duties in § 3400.4(c). Specifically, the comments wanted reference to the regional coal team in §§ 3430.1 and 3430.5-4. In an effort to keep the regulations on coal management as streamlined as possible, the duties of the regional coal teams are centralized to the extent possible, in one section, § 3400.4, and are not repeated throughout the regulations. This suggestion was not adopted by the final rulemaking.

The provisions of § 3430.5-4 have been changed in the final rulemaking so

that they correspond to the language of subpart 3435. Section 3430.5-4 as set out in the proposed rulemaking imposed more onerous requirements on the applicant than does subpart 3435.

Subpart 3431—Negotiated Sales—Rights-of-Way

A comment requested that § 3420.1-4, General requirements for land use plans, be modified to provide that land use plans provide for the necessary rights-of-way for support facilities. In the coal program, land use planning precedes the activity planning so that land use plans are more general for coal than for some other land uses. Nevertheless, use of the surface for rights-of-way for transportation and utility corridors is considered during the multiple use tradeoff phase of land use planning. The requested change was not made in the final rulemaking.

Another comment suggested that the phrase "if appropriate" be inserted in § 3431.2(b) to allow the Secretary of the Interior discretion as to whether or not to apply health and safety, surface protection and rehabilitation requirements to the removal of coal from a right-of-way. Removal of small amounts of coal should not "trigger extensive regulatory requirements." The language of § 3431.2(b) has been retained in the final rulemaking because its requirements are not excessive, and because the Secretary, under the Mineral Leasing Act, as amended, may subject such sales to such conditions as he/she deems appropriate.

The same comment requested deletion of § 3431.2(c) because the Surface Mining Control and Reclamation Act requirements are not applicable and they should not be imposed by regulation. The language of § 3431.2(c), which remains unchanged in the final rulemaking, allows the authorized officer discretion in determining reasonable terms and conditions for the removal of coal and reflects the Department's judgment that the Surface Mining Control and Reclamation Act is properly applied to the removal of such coal.

Subpart 3432—Lease Modifications

Two comments objected to the 160-acre limitation on coal lease modifications provided in the regulations. Since this limitation is a statutory requirement of the Federal Coal Leasing Amendments Act, the acreage limitation (see 30 U.S.C. 203) cannot be revised upward nor can exceptions be made through rulemaking.

Two comments expressed concern about the provisions of § 3432.3 in which the terms and conditions of the original

lease (except the royalty provisions of pre-Federal Coal Leasing Amendments Act leases) are modified to reflect the statutes in effect on the date of application for the modification. The comments cite section 3 of the Mineral Leasing Act, as amended by the 1978 amendments, under which the Secretary is not required to apply certain production or mine plan requirements. These requirements include revised diligence requirements and the submission within three years of a resource recovery and protection plan.

A lease modification does not automatically trigger formation of a logical mining unit. Nothing in the law prevents the Secretary of the Interior from modifying the terms of the original lease, except for the royalty rate on a pre-Federal Coal Leasing Amendments Act lease. The provisions of § 3432.3 are in the public interest and are not being changed in the final rulemaking.

Subpart 3435—Lease Exchange

One comment recommended that the language of §§ 3435.0-1 and 3435.1 be changed to allow portions of leased lands to be exchanged, where such exchanges would serve the public interest. The final rulemaking adopts this recommendation in §§ 3435.0-1 and 3435.1.

Four comments requested that language be added to § 3435.3-1(a) requiring that the Governors be sent a copy of the exchange notice. The final rulemaking does not adopt this suggestion because at the time of the issuance of the exchange notice, the exchange is merely being studied and evaluated. In addition, State Governors have access to information about potential lease exchanges through participation on regional coal teams or upon request from State offices of the Bureau of Land Management.

One comment expressed the view that the qualified exchange proponent might not have any choice in selecting suitable lands for exchange. In lease exchange activities to date, the Department of the Interior has negotiated with the qualified exchange proponent as to suitable lands available for exchange. In addition, § 3435.3-2(a) provides the lessee or preference right lease applicant with an opportunity to inform the Secretary of the Interior of his/or preference for lands to be exchanged. The Secretary, however, retains the final decisionmaking authority on the leases and lands to be exchanged.

The same comment indicated that the method of exchange in the proposed rulemaking differs between lease and fee coal (subpart 3436) exchanges. The methods differ only in the methods of

initiation and the authorization for the exchanges. Moreover, fee coal exchanges under subpart 3436 are not discretionary, once the requirements are met. In the case of fee coal in alluvial valley floor exchanges, the procedures reflect the relevant provisions of the Surface Mining Control and Reclamation Act and judicial decisions. In the more general case of lease exchanges under subpart 3435, the procedures reflect the circumstances of specific legislation or of Secretarial authority. No changes have been made in these provisions by the final rulemaking.

Three comments requested that the phrase "in consultation with the regional coal team" be inserted between the words "negotiate" and "an" where they appear in § 3435.3-2(a). The recommendation has not been adopted in the final rulemaking because it is redundant of language found in § 3400.4.

Five comments were concerned with the provisions of § 3435.3-4. Three of the comments requested that the exchanges be made whole, that is, allow costs other than resource values to be considered in determining fair market value. One of the comments recommended that the Department of the Interior develop an equitable method of evaluation, and another comment recommended that, insofar as possible, evaluations made under subparts 3435 and 3436 use the same procedures.

The exchange evaluation methodology is not a subject of this rulemaking but will vary from exchange to exchange based upon all factors relevant to the value determination. In particular, exchange valuation depends upon whether the statute authorizing the exchange allows consideration of factors other than the value of the coal resource. Therefore, the final rulemaking retains the language of the existing regulations for § 3435.3-4.

One comment suggested that the notice for interest in a public hearing described in § 3435.3-5 be published some minimum time before a public hearing would be set up. This suggestion has not been adopted in the final rulemaking because the notice is to solicit public response on whether to hold a public hearing. If a public hearing is held, notice would be given in sufficient time to allow interested parties to participate.

There were three comments on certificates of bidding rights, two of which supported their use, while one opposed them. The comment opposing their use misunderstood that their value is based only on the value of the resource surrendered.

One comment suggested several situations in which certificates of bidding rights might be issued to exchange proponents. To date the Department of the Interior has had no experience in administering certificates of bidding rights. As a detailed policy on the uses of bidding rights develops, the recommendations made in the comments will be considered.

Subpart 3436—Lease Exchanges—Alluvial Valley Floors

There were eight comments on subpart 3436. Four comments generally supported and four objected to several of the changes made by the proposed rulemaking.

Two comments stated that the definition of "substantial financial and legal commitments" given in § 3436.0-5 was contrary to the definition given in the Surface Mining Control and Reclamation Act. Two comments objected on the basis that the definition was too restrictive of the types of expenditures allowed and legal commitments made. The definition of "substantial financial and legal commitments" in § 3436.0-5 is not contrary to § 510(b)(5) of the Surface Mining Control and Reclamation Act, the alluvial valley floor exchange provision. The final rulemaking, in keeping with the practice of the Department of the Interior's having defined these two confusing, but different statutory phrases, differentiates between the two terms. The Office of Surface Mining's definition of the different term "substantial legal and financial commitments" is contained in the definition section of this final rulemaking in § 3400.0-5(11). The term "substantial legal and financial commitments" is used in the context of unsuitability assessments. The definition in § 3436.0-5 clarifies, in general terms, how a determination of substantial financial and legal commitments for alluvial valley floor exchange purposes will be made.

No attempt has been made in this final rulemaking to enumerate the types of financial and legal commitments that would be allowable because of the possibility that some commitments might be inadvertently omitted. Generally, qualifying commitments will be those which are appropriate to a surface coal mining operation.

One comment requested more specific guidance on when financial and legal commitments become substantial, specifically some objective quantitative standard. After careful study of the issue, the Department of the Interior has not found any clearly preferable standard for determining substantiality

and no such standard is included in the final rulemaking.

If substantiality were defined in terms of a minimum dollar amount, then some small operators might not qualify, even though those operators had expended a large percentage of the total amount necessary for developing their operations.

If substantiality were defined in terms of percentage expended in relation to the overall development costs that would have been necessary for completion of the development, no absolute figure could be determined. For instance, a very large operation may have financial or legal commitments amounting to only 1 or 2 percent of the projected total development costs. The dollar amount might be several hundred thousand dollars. Such large outlays cannot be called "insubstantial" simply because the amount fails to reach some minimum percentage of total projected outlay required to develop a surface coal mining operation.

There is nothing in the legislative history of the Surface Mining Control and Reclamation Act addressing the Secretary of the Interior's right to compare the substantiality of the financial or legal commitment of the operator to the total projected cost of the development. Because this is the most equitable alternative available, the final rulemaking adopts the standard set forth in § 3436.0-5.

In response to two comments, the words "exclusively" and "solely" have been deleted from § 3436.0-5 in the final rulemaking to remove potential inequities in situations where the qualifying financial or legal commitment was shared by two or more coal properties. If a financial and legal commitment can be shown to be tied to the offered property, the exchange proponents should not be disqualified from making an exchange because the commitment relates to other properties also.

One comment recommended that value determinations on coal lands offered for exchange to the Department of the Interior include consideration of potential future values of those coal lands. Nothing in the Surface Mining Control and Reclamation Act or its legislative history allows the Department to consider anything other than the current value of the coal resource. Therefore, this recommendation has not been adopted by the final rulemaking.

One comment recommended that exchange proponents should have the right to select the lands suitable for exchange and that the Secretary of the Interior should be allowed to reject the

proposal only if the selected tract has already been identified for leasing at a planned lease sale or if the value of the selected tract is so large as to preclude its exchange pursuant to § 3436.2-3(e). The Department of the Interior will certainly negotiate with qualified exchange proponents and consider any tracts the exchange proponent may wish to acquire. While exchange is mandatory for qualified exchange proponents, the Secretary must retain the right to determine the lands to be exchanged to assure that the public interest is served.

The options of exchanging fee coal for certificates of bidding rights and of exchanging fee coal for leases acquired at public auction, recommended by one comment, will be considered on a case-by-case basis.

Part 3440—Licenses To Mine

Subpart 3440—Licenses to Mine

The two comments received on this subpart objected to the elimination in § 3440.1-4(c)(3) of the language requiring the licensee to comply with all Federal and State laws for the safety of miners, prevention of waste, etc. Because this language appears in section 2(a) of the License to Mine Coal form, its appearance in the regulation is deemed redundant and no change has been made in the final rulemaking. Moreover, § 3440.1-6 provides that violations of Federal law or regulations can result in cancellation or forfeiture of licenses to mine.

Part 3450—Management of Existing Leases

Subpart 3451—Continuation of Leases—Readjustment of Terms

Three comments objected to the application of Federal Coal Leasing Amendments Act requirements to pre-Federal Coal Leasing Amendments Act leases at readjustment. A recent Solicitor's Opinion, M-36939 (September 17, 1981), concludes that "when the Secretary readjusts a pre-Federal Coal Leasing Amendments Act lease, he must do so in conformity with the Act, as amended." Lease provisions affected by this opinion include royalty rates (section 3451.1(a)(2)) and periods at which leases are subject to readjustment (section 3451.1(a)(1)). These sections are adopted in the final rulemaking in the same form as they appeared in the proposed rulemaking.

Three comments supported and two comments objected to the deferment of the application of unsuitability criteria on existing leases from readjustment to mining permit approval provided in

§ 3451.1(a)(3) of the proposed rulemaking. One comment confused the deferral with the complete elimination of application of the criteria. At the mining permit approval stage, the mandatory criteria contained in section 522(e) of the Surface Mining Control and Reclamation Act would be applied to all existing leases.

The other comment with objections to the revision made by the proposed rulemaking stated that the application of those criteria not mandated by section 522(e) of the Surface Mining Control and Reclamation Act are part of the Secretary's responsibility to conduct a Federal lands review when mining permit applications are being reviewed. The resource values that may be protected under the discretionary criteria based on section 522(a)(3) of the Act would be considered at that time, and could be protected through the regulatory authority's stipulations in the mining permit to afford protection of unique and unusual resource values.

Five comments objected to aspects of the lease readjustment procedures. All comments stated that specific readjustment procedures should be described in the regulations, and three recommended some minimum time—120 days or 6 months—by which the Federal Government must notify the lessees of its intent to readjust or lose the right. One comment stated that more negotiation time should be allowed for bargaining with the Federal Government over readjusted lease terms and conditions. One comment stated that the regulations should clarify the administrative appeal procedures.

The recent decision of the Tenth Circuit Court of Appeals in the *Rosebud Coal Sales Co. v. Andrus* (No. 80-1842, Jan. 8, 1982) case is currently being reviewed in the Bureau of Land Management. The United States has decided not to appeal the decision. The court's decision was rendered after publication of the proposed rulemaking. The language of § 3451.1(b) has been amended in the final rulemaking to reflect the court's decision that Federal coal leases may not be readjusted unless actual notice is given of the readjustment, or of the intent to readjust, prior to the twenty-year anniversary date of the lease.

Because changes will be made in readjustment procedures, detailed procedures are not set forth in the regulations. Instead, the procedures will be described in internal Bureau of Land Management memoranda and manuals, which will be available to the public upon request. Under current procedures, the word "decision" in paragraph (d) and (e) means the decision of the

authorized officer in response to objections filed by the lessee to the notice of readjusted lease terms. If other procedures are instituted consistent with paragraph (b), the notice of readjusted lease terms will indicate whether or not it is appealable.

Several comments requested that the final rulemaking state that State Governors will be notified of pending lease readjustments. Information about pending lease readjustments is available to the State through participation on the regional coal teams or directly through the appropriate State offices of the Bureau of Land Management. This suggestion has not been adopted in the final rulemaking.

Because of confusion displayed in the comments, § 3451.2(b) has been amended in the final rulemaking to clarify existing procedures relating to the effective date of readjusted terms and conditions. Readjusted terms and conditions are effective 60 days after receipt by the lessee (or 30 days after transmittal of information to the Attorney General in those instances where the authorized officer calls for such information).

Of course, the effective date may not precede the readjustment anniversary date. While the lessee has the right to make objections about the new terms and conditions to the authorized officer, and while that right of objection must be exercised prior to an appeal to the Board of Land Appeals, the taking of such an objection shall not stay the effective date of the readjusted terms and conditions. Paragraph (e) is amended by the final rulemaking to provide that the difference between the existing and readjusted rentals and royalties will accrue and not be due and payable during the pendency of the appeal. If the readjusted financial terms are sustained on appeal, such rents and royalties, plus interest, would be due and payable immediately.

The purpose of the lease readjustment is to bring existing leases into conformity with statutes passed and policy changes made since their issuance. Lease terms are generally, therefore, not open to negotiation. Nothing prevents lessees, of course, from contacting State offices of the Bureau of Land Management around the time of readjustment eligibility of their leases and discussing their situations with the personnel in the appropriate Bureau of Land Management State Office. Under § 3475.1 the authorized officer has the authority to modify any standard lease stipulations not required by law or regulation.

The final rulemaking adds a sentence to § 3451.2 which cites the relevant appeal regulations.

Subpart 3452—Relinquishment, Cancellation, and Termination

One comment objected to the deletion of the phrase "upon a satisfactory showing that the public interest would not be impaired" from § 3452.1-1 by the proposed rulemaking. The comment expressed the view that the deletion would encourage high-grading, the abuse of maximum economic recovery and fair market value and damage diligent development. The Secretary of the Interior has statutory responsibilities with regard to fair market value, maximum economic recovery and diligent development and will ensure that the public interest will not be impaired by lease relinquishment, whether or not so stated in the regulations. This obligation is reflected in § 3452.1-3.

In response to another comment, the term "lease reserves" has been changed to "recoverable coal reserves" in § 3452.1-1 by final rulemaking so that it corresponds with the provisions of 30 CFR Part 211. The same comment queried whether relinquishment applied to logical mining units or the individual leases within them only. Relinquishments refer only to individual leases, not to the logical mining units to which they belong.

Two comments suggested that relinquishment should, if appropriate, be based upon geologic features which do not conform to legal subdivisions. Leases must be issued, modified or relinquished based upon legal descriptions (30 U.S.C. 187) and so the suggestion cannot be adopted.

One comment suggested that the phrase "that the relinquishment would not impair the public interest" be deleted from § 3452.1-3, since relinquishments would never impair the public interest. This suggestion has not been adopted in the final rulemaking since there may be cases where relinquishment would not be in the public interest. It would not be in the public interest to allow manipulation of logical mining unit diligence, high grading and failure to achieve maximum economic recovery. Such practices could theoretically occur if lease relinquishments were automatically granted.

Three comments recommended that State Governors be notified of lease cancellations for reasons previously stated in the discussion of subpart 3451 of this preamble. The recommendation was not adopted in the final rulemaking.

One comment recommended that renumbered § 3452.2-1(b) be deleted because it exceeds the authority granted by the Mineral Leasing Act, as amended. The interpretation suggested in the comment is not correct and the section has been retained in the final rulemaking.

One comment objected to the deletion of the phrase "in force on the date of the lease * * * under the terms of the lease" in § 3452.2-1(a)(2) because the deletion would invalidate the "hereafter in force" clause in the lease. The final rulemaking retains the language of the proposed rulemaking. The change was designed to simplify and shorten § 3452.2-1(a)(2) but does not change the meaning; what rules are "applicable" is determined by examining the lease form and the "hereafter" clause that incorporates some later rules into the lease.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

Two comments recommended that preference right lease applications and exploration licenses be transferable to those people and entities qualified to hold them. The language of this subpart has been modified in the final rulemaking to make preference right lease applications and exploration licenses transferable.

Four comments requested that State Governor(s) be apprised of lease transfers. This information is available to the States through participation on the regional coal teams or directly through Bureau of Land Management State offices. Therefore, the comment has not been adopted in the final rulemaking.

The largest number of comments on this subpart was concerned with § 3453.3-1(a)(8). These comments stated that section 3 of the Federal Coal Leasing Amendments Act does not prohibit transfers of coal leases to lessees not producing coal in commercial quantities from pre-Federal Coal Leasing Amendments Act coal leases by August 4, 1986. The comments claim that section 3 merely prevents such lessees from being issued new leases.

The Department of the Interior does not interpret section 3 of the Federal Coal Leasing Amendments Act to prohibit lease transfers to such lessees, but the Act appears to weigh against allowing these transfers. Section 30 of the Mineral Leasing Act, as amended (30 U.S.C. 184), gives the Secretary of the Interior discretion to approve or disapprove any transfer and requires his consent for assignment or sublease of leases. This authority was discussed in the July 1979 preamble to the existing

regulations (44 FR 42602). The Secretary has decided to exercise this authority to refuse approval of a lease transfer by requiring transferees to comply with section 3 of the Federal Coal Leasing Amendments Act, that is, transferees must be eligible to bid for new leases under that section in order to qualify to receive leases by transfer.

If such lessees are not eligible to receive new leases as a result of the provisions of section 3 of the Federal Coal Leasing Amendments Act, then it follows that these lessees should not be allowed to receive Federal coal leases by transfer. Such transfers would circumvent section 3 because a lessee not eligible for a new coal lease could purchase that lease from the person to whom it was issued by transfer. This rulemaking makes consistent the legislative policy not to put leases into the hands of persons who, after 1986, have held any non-producing leases for more than ten years.

The Department of the Interior recognizes the burden placed on industry by section 3 of the Federal Coal Leasing Amendments Act but suggests that a legislative solution is more appropriate than a rulemaking which allows circumvention of the intent of the Act. Therefore, the final rulemaking adopts the language of the proposed rulemaking.

Part 3460—Environment

Subpart 3461—Federal Lands Review—Unsuitability for Mining

The various provisions of subpart 3461 were the subject of a large number of comments. Sections of the subpart that were not changed in the proposed rulemaking were also the subject of comments. All of these comments were given careful consideration during the decisionmaking process on this final rulemaking, even though only those that had a direct impact on the final rulemaking are discussed.

Nearly all of the comments on subpart 3461 made suggestions concerning § 3461.1. In general, the comments fell into six areas of discussion, all of which were considered prior to issuing the proposed rulemaking. The six issues are: (1) Eliminate all the unsuitability criteria; (2) Eliminate all criteria except those specifically identified in section 522 of the Surface Mining Control and Reclamation Act; (3) Combine criteria 9 through 15; (4) Amend certain criteria (numbers 1, 2, 3, 9, 11, 12, 13, 14, 16 and 17) to conform to the decision in the *Texaco, Inc. v. Andrus* case; (5) Eliminate application of criteria on Federal lands in those areas with checkerboard ownership pattern; and (6)

Eliminate criterion 4 (Section 3461.1(d)) which applies to lands designated for wilderness study.

After carefully considering all comments made on § 3461.1, the Department of the Interior has determined: (a) Not to eliminate or combine any of the unsuitability criteria; (b) to modify criteria 1, 2, 3, 9, 11, 12, 13, 14, 16 and 17 to conform to the decision in *Texaco, Inc. v. Andrus*; and (c) to continue to apply unsuitability criteria on Federal lands regardless of their surface ownership pattern. Criterion 4 (Federal lands designated for wilderness study) is retained to conform with other regulatory provisions concerning such lands. Other changes made to section 3461 by the proposed rulemaking have been retained by the final rulemaking to reflect policy changes and to simplify the existing regulations.

Four of six comments on § 3461.1-3 favored the changes made by the proposed rulemaking. Comments on both sides of the issue suggested that the public should have an opportunity to submit comments to the Bureau of Land Management before the Bureau makes a decision on the results of application of unsuitability criteria. The purpose of the change to this section is to clarify and more explicitly state the process for application of the unsuitability criteria. Provisions for public participation during the planning process are in the regulations on planning—43 CFR Part 1600.

Paragraphs (b) and (c) of § 3461.3-1 were inadvertently deleted by the proposed rulemaking. These paragraphs are, therefore, restored in the final rulemaking.

All of the comments on § 3461.3-3 disagreed with the deletion of the findings requirement from this section by the proposed rulemaking. The comments stated that retention of the findings requirement would allow for consistency to be achieved between the Bureau of Land Management and the Office of Surface Mining. The comments further stated that the public is afforded time to analyze the accuracy of the Office of Surface Mining's application of the unsuitability criteria contained in the Surface Mining Control and Reclamation Act by comparing that agency's application of the criteria with the Bureau of Land Management's application of them. The findings statement is appropriate for inclusion in the Office of Surface Mining's regulations because section 522(d) of the Surface Mining Control and Reclamation Act requires the regulatory authority to prepare the findings statement.

The 1979 regulations assumed that the Bureau of Land Management could facilitate the petition process by making the findings statement during land use planning. This has not turned out to be the case. The petitions that have been filed so far have generally requested that the Office of Surface Mining designate areas unsuitable which had not been assessed as unsuitable by the Bureau of Land Management. Consequently, the Bureau had not prepared any findings statement. The Department of the Interior's experience to date has shown that having the Bureau of Land Management prepare a findings statement for those portions of a planning area which it assesses as unsuitable is generally a waste of time and money because the preparation of the findings statement by the Bureau does not facilitate the work of the Office of Surface Mining. Therefore, the final rulemaking adopts the change made by the proposed rulemaking.

The comments on § 3461.4 were evenly divided in favor of and against the changes made by the proposed rulemaking. Eight comments were of the opinion that preference right lease applications should be included in the category of lands exempt from application of the unsuitability criteria. After analysis of the comments, the Department of the Interior has decided to retain in the final rulemaking those provisions of the proposed rulemaking that exempted all existing leases, but not preference right lease applications, from the unsuitability screening process identified in subpart 3461. However, the new policy does not exempt existing Federal coal lease development from the statutory environmental protection requirements which are applied by the Office of Surface Mining or the States at the time of the mine permit application review. Nor does it prevent the regulatory authority from considering any recommendations made by the surface management agency concerning unique or unusual resource values identified during land use planning or mine permit application review that may need protection from the effects of mining.

The mandatory criteria found in section 522(e) of the Surface Mining Control and Reclamation Act, as well as the alluvial valley floor criterion in section 510(b)(5) of the Act, would still be applied to lands covered by existing leases by the regulatory authority when determining whether to issue a mining permit. The resource values may be protected under the discretionary criteria based on section 522(a)(3) of the Act would be considered at that time

also, and could be adequately protected through the regulatory authority's stipulations in the mine permit to afford protection of unique and unusual resource values. Application of the unsuitability criteria to unleased lands (including areas of preference right lease applications) during land use planning will continue because it has proven to be an effective mechanism. However, the public interest is not being served by having the surface management agency formally apply the unsuitability criteria of subpart 3461 to lands covered by existing leases. The Department of the Interior is examining different methods of conducting the Federal lands review required by section 522(b) of the Surface Mining Control and Reclamation Act with the intent of establishing unified policies and procedures for the Bureau of Land Management and the Office of Surface Mining that meet the requirements of the Act but are not costly, time-consuming and duplicative.

Part 3470—Coal Management Provisions and Limitations

Subpart 3472—Lease Qualification Requirements

The nine comments on subpart 3472 were confined to § 3472.1-2(e) and § 3472.1-3(b)(1). In the case of § 3472.1-2(e), the comments were concerned that the prohibition against assignments of coal leases to parties holding nonproducing coal leases more than 10 years old on August 4, 1986, exceeded the intent of the Federal Coal Leasing Amendments Act. As discussed in the preamble to subpart 3453, the Department has decided, as a matter of policy, based on the Secretary of the Interior's authority to refuse approval of assignments, to insert this requirement. The final rulemaking, therefore, retains the phrase "and no existing lease shall be assigned to any party" in § 3472.1-2(e) of the proposed rulemaking.

The comments on § 3472.1-3(b)(1) raised questions regarding the filing of qualifications statements of stockholders owning or controlling more than 10 percent of the corporate stock. This requirement is necessary according to Solicitor's Opinion M-36843 (November 12, 1971). The acreage limitation on Federal coal leases was instituted by Congress to prevent a monopoly on Federal coal holdings by a few lessees. Although the paperwork requirements for qualifications statements and the review and analysis of these statements may be time-consuming, the Department of the Interior has the statutory responsibility to compute acreage holdings and prevent Federal coal holding in excess

of the statutory limits. Although the final rulemaking makes no change in this section, the Department will continue to review the detail of required qualifications statements for possible reductions of burdens on the public.

One comment inquired whether or not failure by a subsidiary to meet diligence requirements would cause the parent corporation not to be able to qualify for more Federal coal leases. The only relevant provisions is in section 3 of the Federal Coal Leasing Amendments Act, which states that a subsidiary that has held a lease for ten years (for old leases after August 4, 1986) and is not producing coal in commercial quantities, will disqualify the parent company and the subsidiary from acquiring new Federal coal leases. The same comment inquired whether the prohibition against lease issuance in section 3 of the Federal Coal Leasing Amendments Act applied to all leasable minerals or only to coal. This final rulemaking relates only to coal leases and implies nothing about section 3's applicability to other minerals.

Two comments requested information about the meaning of the phrase "any appreciable percentage" in § 3472.1-2 with respect to alien stock ownership. The comments suggested 10 percent as an appreciable percentage. This issue was discussed at length in the July 19, 1979 (44 FR 42606) preamble to that edition of the coal regulations. The only change in that discussion is that the prohibition against nonreciprocal alien stockholding applies to appreciable percentages of stock in the lessee, not the parent corporation of the lessee. Nonreciprocal alien stock ownership in a parent is relevant only if it amounts to control of the stock of the lessee (see *No Oilport! v. Carter*, 520 F. Supp. 334 (W.D. Wash. 1980)).

Subpart 3473—Fees, Rentals and Royalties

One comment recommended that rentals on coal leases be credited at lease readjustment against royalties until coal is produced on the lease in commercial quantities. This recommendation cannot be adopted because section 6 of the Federal Coal Leasing Amendments Act requires the Secretary of the Interior to prescribe annual lease rentals by regulation and deletes the requirement to credit rentals against royalties for coal.

Four comments supported and five objected to the removal of the 5 percent floor on royalty rate reductions for underground mined coal made by the proposed rulemaking to § 3473.3-2(d). Supporters state that the elimination of

the 5 percent royalty rate reduction floor will allow difficult but legitimate mining operations to stay in business. The objecting comments stated that eliminating the royalty floor is an industry bailout. However, these comments should recognize that there is an initial royalty rate floor of 12.5 percent for surface mined coal but no floor (except that the rate cannot be reduced to zero) on the minimum to which the royalty rate can be reduced for good cause. Eliminating the floor to which the royalty rate for underground mined coal can be reduced merely brings the practice for underground mined coal into line with the practice for surface mined coal. There is still an initial royalty rate floor of 5 percent for underground mined coal.

The proposal to eliminate the royalty rate reduction floor for underground mined coal is designed to give the Secretary of the Interior maximum discretion in setting royalty rates for specific individual mining operations and so is retained in the final rulemaking. Language has been added to § 3473.3-2(d) by the final rulemaking to make it clear that the royalty may never be waived or suspended.

The comments evidenced some confusion over the language contained in § 3473.3-2(a)(3). This paragraph is intended to mean that leases for underground mined coal will be issued at a royalty rate of not lower than 5 percent, and then only if the conditions warrant. Once the lease issues, however, the royalty rate may be reduced below 5 percent if conditions warrant (section 3473.3-2(d)).

Three comments objected to the method by which the value of the coal was determined for royalty accounting purposes (section 3473.3-2(a)(2) and 30 CFR 211.63). They argue that royalties based on the gross value of coal are a tax upon a tax because various taxes are included in the "value of the coal" determination. These comments are addressed in the final rulemaking for 30 CFR Part 211.

Seven comments were received on the overriding royalty interest provision (section 3473.3-2(c) and 30 CFR 211.63), particularly the language on net profit sharing. In response to these comments, the language in § 3473.3-2(c)(2) on net profit sharing has been eliminated. The language in § 3473.3-2(c)(1) contained in the proposed rulemaking has been revised to agree with the language of 30 CFR 211.63 and has been adopted in the final rulemaking as § 3473.3-2(c). The revision adopts an exception for mine financing and clarifies the types of investments which qualify. These

changes are contained in the final rulemaking for 30 CFR Part 211.

Subpart 3474—Bonds

One comment recommended the reinstitution of self-bonding for coal leases and three other comments recommended the reinstitution of nationwide and statewide bonding for coal leases.

Self-bonding was eliminated by the Department of the Interior for coal leases when the 1979 regulations were promulgated. The greatly increased royalty rates for coal mandated by the Federal Coal Leasing Amendments Act, as well as the environmental statutes enacted since the passage of the Mineral Leasing Act in 1920, make self-bonding impractical. The nationwide and statewide bonds previously allowable for coal would not adequately indemnify the United States against default on the payment of rentals, royalties or bonuses or against noncompliance with lease terms and conditions.

In addition, nationwide and statewide bonding discriminates against small leaseholders. Therefore, the final rulemaking does not reinstate self-bonding or nationwide and statewide bonding.

The initial lease bond amount is set by the appropriate authorized officer of the Bureau of Land Management. The Minerals Management Service periodically reviews the lease bond amount and adjusts it to respond to changing conditions. Subpart 3474 provides adequate flexibility to allow for reasonable bonding levels protecting the public interest. Therefore, the final rulemaking adopts the language in the proposed rulemaking for subpart 3474.

In response to two comments, the phrase "interim program authority governing Federal lands" has been changed in § 3474.3(b)(1) by the final rulemaking to "cooperative agreement governing" to more accurately reflect the existence of cooperative agreements under the Surface Mining Control and Reclamation Act.

A new § 3474.3(c)(2) has been added by the final rulemaking to clarify that the logical mining unit bond terminates when a logical mining unit terminates.

Subpart 3475—Lease Terms

One comment agreed that a new standard coal lease form was needed and requested that a revised proposed form be published in the *Federal Register* for comment before being instituted.

A revised lease form, based on this final rulemaking and the numerous comments received on the form published for comment in the *Federal*

Register on December 15, 1980 (45 FR 83334), is in preparation. Although the comment period on the draft lease form closes with the publication of this final rulemaking, comments on the lease form may still be submitted. If time permits, the Bureau of Land Management will consider them in preparing the final revision of the lease form.

The lease form has a long history. Comments on the December 1980 draft form were received during the official 30-day comment period on the form, as well as in response to the Department of the Interior's call for identification of "excessive, burdensome and counterproductive" regulations. The comments received as a result of these actions were extensive and covered almost all sections of the proposed lease form. Publication of a revised lease form for comment would not serve any useful purpose, since the changes made to the final lease form will be partially based on a consideration of all comments received to date.

The other comment on this subpart objected to § 3475.1 allowing the authorized officer to modify provisions of the lease form not required by statute or regulations and to add other appropriate stipulations. The comment expressed the view that this exceeded the authorized officer's authority. This language was inserted to allow for special, that is, site specific, stipulations. Such special stipulations are inserted as necessary and have historically been a standard mineral leasing practice of the Department of the Interior. Under section 30 of the Mineral Leasing Act, as amended, the Secretary of the Interior has the authority to insert such lease terms as he/she deems appropriate for the protection of the interests of the United States and for other purposes.

There were three comments on the lease terms provisions in § 3475.5 of the proposed rulemaking. One comment requested that the Federal Coal Leasing Amendments Act be amended to allow exemptions from the continued operation requirement for administrative delay and to eliminate the payment of advance royalties. There are situations in which the payment of advance royalties is in the public interest, and the Department of the Interior will not seek to have the statute amended. Efforts are being made by the Department to increase administrative efficiency through the management by objectives system and this should reduce administrative backlogs and processing time.

Comments addressing the diligence requirements of 30 CFR Part 211

referenced in § 3475.5 are discussed in the final rulemaking on 30 CFR Part 211.

There were three comments on § 3475.6, logical mining units. Two of the comments were concerned about the conditions under which the Mining Supervisor would issue an order creating a logical mining unit and the rights of pre-Federal Coal Leasing Amendments Act lessees with respect to the formation of logical mining units. The proposed deletion of the requirement that all leases are automatically logical mining units has been adopted by the final rulemaking. These concerns and others raised by the comments are considered in the final rulemaking on 30 CFR Part 211.

Editorial and grammatical changes, as needed, have been made.

The primary authors of this final rulemaking are Patrick H. Geehan, Ryan Dudley and Carole Smith, Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, assisted by Marianne O'Brien and other staff of the Division of Energy and Resources, Office of the Solicitor, Department of the Interior, and other Bureau of Land Management and Department of the Interior staff.

As the result of the changes made in the final rulemaking, another environmental assessment has been prepared on the effects of this final rulemaking. That new assessment also resulted in the finding that no significant impact will result from the publication of this final rulemaking. The second environmental assessment is available upon request from the Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, Washington, D.C. 20240. Therefore, it is hereby determined that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The types of small entities which would be most directly affected by the changes proposed in this rulemaking would be small businesses involved with or considering involvement with the Federal coal leasing program. The existing Federal coal leasing regulations provide that lease tracts can be set aside at lease sales, reserved for bidding only by small business. The Small Business

Administration at 13 CFR Part 121 defines those that are members of this class of bidder. Generally, small business will share with all others in the savings associated with the streamlining of the regulations made by this final rulemaking.

The information collection requirements contained in 43 CFR Group 3400, Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460 and 3470 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004—

List of subjects in 43 CFR Group 3400:

Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

Part 3410

Coal, Environmental protection, Mines, Public lands—mineral resources, Surety bonds.

Part 3420

Administrative practice, and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

Part 3430

Administrative practice, and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Public lands—rights-of-way.

Part 3440

Coal, Mines, Public lands—mineral resources.

Part 3450

Coal, Mines, Public lands—mineral resources, Surety bonds.

Part 3460

Coal, Environmental protection, Mines, Public lands—classification, Public lands—mineral resources.

Part 3470

Coal, Mineral royalties, Mines, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351—359 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and the Multiple Mineral Development Act (30 U.S.C. 521—531) Group 3400, Subchapter C, Chapter II, Title 43 of the

Code of Federal Regulations is amended as set forth below.

James G. Watt,
Secretary of the Interior.
July 12, 1982.

GROUP 3400—COAL MANAGEMENT

Note.—The information collection requirements contained in Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460 and 3470 of Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004—. The information is being collected to allow the authorized officer to determine if the applicant to lease, explore for or develop Federal coal is qualified to hold such lease. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

PART 3400—COAL MANAGEMENT—GENERAL

§ 3400.0-4 [Removed]

1. Section 3400.0-4 is removed in its entirety.

§ 3400.0-5 [Amended]

2. Section 3400.0-5 is amended by:

- (a) Revising paragraph (a) to read:
 - (a) "Alluvial valley floor" has the meaning set forth in 30 CFR Chapter VII.
- (b) Amending paragraph (d) by removing the phrase "logical mining unit" and replacing it with the phrase "mining operation";
- (c) Amending paragraph (f) by removing the word "nontransferable";
- (d) Removing paragraphs (h), (i), (j) and (k) in their entirety;
- (e) Renumbering paragraph (l) as paragraph (h);
- (f) Removing paragraph (m) in its entirety;
- (g) Renumbering paragraphs (n) and (o) as paragraphs (i) and (j);
- (h) Renumbering paragraph (p) as paragraph (k) and revising it to read:

(k) "Exploration" has the meaning set forth in 30 CFR 211.2.

(i) Renumbering paragraph (q) as paragraph (l);

(j) Renumbering paragraph (r) as paragraph (m) and revising it as follows:

(m) "Exploration plan" has the meaning set forth in 30 CFR 211.2.

(k) Renumbering paragraph (s) as paragraph (n);

(l) Renumbering paragraph (t) as paragraph (o) and amending it by removing the phrase "mineral estates or coal estates underlying private surface," and replacing it with the phrase "surface estate, mineral estate and coal estate,";

(m) Renumbering paragraph (u) as paragraph (p);

(n) Renumbering paragraph (v) as paragraph (q) and amending it by adding at the end "Stock ownership or stock control does not constitute an interest in a lease within the meaning of this definition. Attribution of acreage to stock ownership interests in leases is covered by § 3472.1-3(b) of this title.";

(o) Removing paragraphs (w) and (x) in their entirety;

(p) Renumbering paragraph (y) as paragraph (r) and revising it as follows:

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

(q) Renumbering paragraph (z) as paragraph (s) and amending it by inserting after the phrase "reclamation operations" the phrase "under a permit";

(r) Renumbering paragraphs (aa) and (bb) as paragraphs (t) and (u);

(s) Renumbering paragraph (cc) as paragraph (v) and revising it as follows:

(v) "Logical Mining Unit" has the meaning set forth in 30 CFR 211.2.

(t) Renumbering paragraph (dd) as paragraph (w) and revising it as follows:

(w) "Logical Mining Unit reserves" has the meaning set forth in the term "logical mining unit recoverable coal reserves" in 30 CFR 211.2.

(u) Renumbering paragraph (ee) as paragraph (x) and revising it as follows:

(x) "Maximum economic recovery" has the meaning set forth in 30 CFR 211.2.

(v) Removing paragraph (ff) in its entirety;

(w) Renumbering paragraph (gg) as paragraph (y);

(x) Renumbering paragraph (hh) as paragraph (z) and revising it as follows:

(z) "Mining plan" means a resource recovery and protection plan as described in 30 CFR 211.2.

(y) Renumbering paragraph (ii) as paragraph (aa) and revising it as follows:

(aa) "Mining Supervisor" means the District Mining Supervisor, Minerals Management Service.

(z) Renumbering paragraph (jj) as paragraph (bb);

(aa) Renumbering paragraph (kk) as paragraph (cc) and amending it by inserting before the word "licensee" in the two places it appears, the word "exploration";

(bb) Removing paragraph (ll) in its entirety;

(cc) Renumbering paragraph (mm) as paragraph (dd) and revising it as follows:

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

(dd) Renumbering paragraphs (nn) as paragraph (ee) and revising it to read:

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

(ee) Renumbering paragraph (oo) as paragraph (ff);

(ff) Renumbering paragraph (pp) as paragraph (gg) and revising it to read:

(hh) "Reserves" has the meaning set forth in the term "recoverable coal reserves" in 30 CFR 211.2.

(gg) Renumbering paragraph (qq) as paragraph (hh) and amending it by inserting after the word "means" the word "the";

(hh) Renumbering paragraph (rr) as paragraph (ii) and amending it by removing the phrase "or his authorized representative";

(ii) Renumbering paragraphs (ss), (tt), (uu) and (vv) as paragraphs (jj), (kk), (ll) and (mm);

(jj) Renumbering paragraph (ww) as paragraph (nn) and amending it by removing the period at the end and adding the phrase ", and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the Forest Service.";

(kk) Renumbering paragraph (xx) as paragraph (oo) and revising it as follows:

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

(ll) Renumbering paragraphs (yy) and (zz) as paragraphs (pp) and (qq).

§ 3400.1 [Amended]

3. Section 3400.1 is amended by:

(a) Inserting the figure "(a)" before the existing text of the section and removing the word "prospecting" and replacing it with the word "exploration"; and

(b) Adding a new paragraph (b) as follows:

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

§ 3400.3-4 [Amended]

4. Section 3400.3-4 is amended by removing the figure "(t)" where it appears and replacing it with the figure "(o)".

§ 3400.4 [Amended]

5. Section 3400.4 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.3-1(a)" where it appears in the first sentence and replacing it with the figure "§ 3400.5", by inserting in the second sentence after the phrase "the Governor of each State" the phrase "included in the region", by removing in the third sentence the word "chairman" and replacing it with the word "chairperson", and by removing in the fourth sentence the phrase "on more than" and replacing them with the phrase "of only";

(b) Revising paragraph (b) as follows:

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

(c) Removing paragraph (c) in its entirety;

(d) Renumbering paragraph (d) as paragraph (c) and removing the word "concerning" and replacing it with the word "including";

(e) Renumbering paragraph (e) as paragraph (d) and revising it as follows:

(d) Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. Participation may be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct surface management responsibilities in areas potentially affected by coal management decisions. However, at

every point in the deliberations, the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

* * * * *

(f) Renumbering paragraph (f) as paragraph (e); and

(g) Adding a new paragraph (f) as follows:

* * * * *

(f) The regional coal team shall function under the general provisions of the cooperative procedures of subpart 1784 of this title.

6. A new § 3400.5 is added as follows:

§ 3400.5 Coal production regions.

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

PART 3410—EXPLORATION LICENSES

§ 3410.0-4 [Removed]

7. Section 3410.0-4 is removed in its entirety.

§ 3410.1-2 [Amended]

8. Section 3410.1-2(b) is amended by removing the words "for other than commercial purposes" where they appear.

§ 3410.2-1 [Amended]

9. Section 3410.2-1 is amended by:

(a) Removing paragraph (b) in its entirety;

(b) Renumbering paragraph (c) as paragraph (b);

(c) Renumbering paragraph (d) as paragraph (c) and amending subparagraph (1) of that paragraph by removing the period at the end of the second sentence and adding the phrase "and shall contain the location of the Minerals Management Service and Bureau of Land Management offices in which the application shall be available for inspection."; and

(d) Renumbering paragraph (e) as paragraph (d).

10. Section 3410.2-2 is revised as follows:

§ 3410.2-2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer, in

coordination with the Minerals Management Service, shall prepare an environmental assessment or environmental impact statement, if necessary, of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. No exploration license shall be issued if the exploration would:

(1) result in disturbance that would cause significant and lasting degradation to the lands or injury to improvements, or in any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quantity, quality or hydrologic conditions of the coal deposits; or (2) jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat. No exploration license shall be issued until after compliance with sections 105 and 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) with respect to any cultural resources which might be affected by any activity under the exploration license.

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

§§ 3410.2-3 and 3410.2-4 [Removed]

11. Sections 3410.2-3 and 3410.2-4 are removed in their entirety.

§ 3410.2-5 Redesignated as § 3410.2-3.

12. Section 3410.2-5 is renumbered § 3410.2-3.

§ 3410.2-6 [Removed]

13. Section 3410.2-6 is removed in its entirety.

§ 3410.3-1 [Amended]

14. Section 3410.3-1 is amended by:

(a) Amending paragraph (c) by removing the phrase "Geological Survey" and replacing it with the phrase "minerals Management Service";

(b) Amending paragraph (e) by removing the word "revoked" and replacing it with the word "cancelled";

(c) Amending paragraph (f) by removing in the first sentence the phrase "with the concurrence of the authorized officer, and, where appropriate, the surface management agency," and removing the second and third sentences of the paragraph;

(d) Amending paragraph (g) by revising subparagraphs (1) and (2) as follows:

* * * * *

(g) * * *

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

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

* * * * *

(e) Amending paragraph (h) by deleting the figure "§ 3410.3-1" and replacing it with the phrase "this section".

§ 3410.3-2 [Amended]

15. Section 3410.3-2 is amended by removing the figure "(a)".

16. Section 3410.3-3 is amended by removing the phrase "Geological Survey" and replacing it with the phrase "Minerals Management Service".

§ 3410.3-4 [Removed]

17. Section 3410.3-4 is removed in its entirety.

§ 3410.3-5 Redesignated as § 3410.3-4 and Amended.

18. Section 3410.3-5 is renumbered 3410.3-4 and is amended by:

(a) Amending paragraph (b) by removing the phrase "and, where appropriate, the surface management agency and the surface owner," by removing the word "insure" and replacing it with the word "ensure", by removing the words "or bonds", by inserting after the word "sufficient" the phrase "; (1)", by removing the phrase "exploration plan and regulations" and replacing it with the phrase "and exploration plan" and by deleting the period at the end of the first sentence and adding the words "; and (2) in the absence of an agreement between the exploration licensee and the surface owner so providing, to assure compensation for damages to surface improvements made by surface owners where an exploration license embraces such lands."; and

(b) Revising paragraph (c) as follows:

* * * * *

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan and the regulations, or upon discontinuance of exploration operations and completion of needed reclamation to the satisfaction of the authorized officer, and where

appropriate, the surface management agency, the authorized officer shall, with the concurrence of the Mining Supervisor, terminate the period of liability of the bond.

19. Section 3410.4 is amended by revising paragraph (b) to read:

(b) The licensee shall furnish the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical and core drilling analyses) obtained during exploration in a form requested 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 [Amended]

20. Section 3410.5 is amended by:

(a) Removing paragraph (a) in its entirety;

(b) Renumbering paragraph (b) as paragraph (a); and

(c) Renumbering paragraph (c) as paragraph (b) and removing all after the word "regulations".

PART 3420—COMPETITIVE LEASING

21. Section 3420.0-2 is revised as follows:

§ 3420.0-2 Objectives.

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

and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

§ 3420.0-6 [Removed]

22. Section 3420.0-6 is removed in its entirety.

§ 3420.1-1 [Removed]

23. Section 3420.1-1 is removed in its entirety.

§ 3420.1-2 Redesignated as § 3420.1-1

24. Section 3420.1-2 is renumbered § 3420.1-1.

§ 3420.1-3 Redesignated as § 3420.1-2

25. Section 3420.1-3 is renumbered section 3420.1-2 and is revised as follows:

§ 3420.1-2 Call for coal resource information.

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

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

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

§ 3420.1-4 Redesignated as § 3420.1-3 and Amended

26. Section 3420.1-4 is renumbered section 3420.1-3 and is amended by:

(a) Amending paragraph (a) by removing the figure "\$ 3420.4" and replacing it with the figure "\$ 3420.3";

(b) Amending paragraph (b)(1)(iii) by removing the phrase "evidence of qualification (43 CFR 3472.2-5(a))" and replacing it with the phrase "the information specified in §§ 3472.2-5(a) (1) and (2) of this title" and by adding the sentence "The information specified in § 3472.2-5(a) (3) and (4) of this title shall be submitted within 60 days after submission of an expression of leasing interest or lease bid if no expression of leasing interest is made."; and

(c) Amending paragraph (b)(1)(iii) by removing the figure "\$ 3420.4-2" and replacing it with the figure "\$ 3420.3-2".

§ 3420.1-5 Redesignated as § 3420.1-4 and Amended.

27. Section 3420.1-5 is renumbered § 3420.1-4 and is amended by:

(a) Amending paragraph (a) by removing the phrase "The Secretary may not issue a lease for coal development" and replace it with the phrase "The Secretary may not hold a lease sale";

(b) Revising paragraphs (b) (1), (2) and (3) as follows:

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

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

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

(c) Removing paragraphs (c), (d) and (e) in their entirety;

(d) Renumbering paragraph (f) as paragraph (c) and amending it by removing the word "petition" and replacing it with the word "request" and by removing the phrase "Office for" and replacing it with the phrase "Office to prepare"; and

(e) Adding new paragraphs (d) and (e) as follows:

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

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

(1) Only those areas that have development potential may be identified as acceptable for further consideration for leasing. The Minerals Management Service shall estimate coal development potential for the surface management agency. Coal companies, State and local governments and the general public are encouraged to submit information to the Minerals Management Service at any time in connection with such

development potential determinations. Coal companies, State and local governments

and members of the general public may also submit nonconfidential coal geology and economic data during the inventory phase of planning to the surface management agency conducting the land use planning. Where such information is determined to indicate development potential for an area, the area may be included in the land use planning for evaluation for coal leasing.

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

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

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

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

(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further

consideration for leasing for mining by other than underground mining techniques if:

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

(B) The land use plan is amended accordingly.

§§ 3420.2, 3420.2-1, 3420.2-2, and 3420.2-3 [Removed]

28. Sections 3420.2, 3420.2-1, 3420.2-2 and 3420.2-3 are removed in their entirety.

§ 3420.2-4 Redesignated as § 3420.1-5

29. Section 3420.2-4 is renumbered 3420.1-5 and is revised as follows:

§ 3420.1-5 Hearing requirements.

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

§ 3420.2-5 Redesignated as § 3420.1-6

31. Section 3420.2-5 is renumbered 3420.1-6.

§ 3420.2-6 Redesignated as § 3420.1-7 and Amended

30. Section 3420.2-6 is renumbered 3420.1-7 and is amended by removing in the first sentence the phrase "any formal" and replacing it with the word "an" and by removing from the second sentence the phrase "to obtain its recommendations concerning the unsuitability assessment."

§ 3420.2-7 Redesignated as § 3420.1-8 and Amended

32. Section 3420.2-7 is renumbered 3420.1-8 and is amended by removing the figure "§ 3420.4" and replacing it with the figure "§ 3420.3".

33. A new § 3420.2 is added to read:

§ 3420.2 Regional leasing levels.

This section sets out the process to be followed in establishing regional leasing levels. Regional leasing levels shall be established by the Secretary. The Secretary shall particularly rely upon the advice and assistance of affected State Governors in ensuring that leasing

levels have properly considered social, environmental and economic impacts and constraints.

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

(1) The appropriate Bureau of Land Management State Director on the regional coal team, as designated by the regional coal team chairperson, shall prepare a broadly stated range of initial leasing levels for the region. This range of initial leasing levels shall be based on information available to the State Director, including land use planning data, the results of the call for coal resource information held under § 3420.1-2 of this title, the results of the call for expressions of leasing interest held under § 3420.3-2 of this title and other pertinent factors;

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

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

(4) The regional coal team chairperson shall call upon the team members to present their findings and recommendations on the initial leasing levels. The chairperson shall refer the members' recommendations to an appropriate Bureau State Director serving on the team. The State Director shall: (i) Ensure the recommendations are in an appropriate format; (ii) add any additional information from the Bureau of Land Management and the Minerals Management Service data sources which may be available and pertinent to leasing level decision-making; (iii) address any questions and clarify any issues raised by the members' recommendations; and (iv) outline any additional alternative leasing levels. The regional coal team shall consider the State Director's review and shall transmit to the Secretary alternative leasing levels presented in ranges of tons to be offered for lease. All Governor's comments and

recommendations shall also be transmitted to the Secretary, without change, as a part of the team transmittal; and

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

(b) The Secretary, upon receipt of the regional coal team transmittal, shall initiate consultations, in writing, with the Secretary of Energy, the Attorney General and affected Indian tribes. The Secretary shall establish leasing levels by region for the purposes of approximating the amount of coal to be offered through proposed lease sale schedules after consideration of potential policy conflicts or problems concerning, but not limited to:

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

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

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

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

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

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

(4) Expressed interests for special opportunity sales;

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

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

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

(8) Consideration of national energy needs; and

(9) Other pertinent factors.

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

(e) The levels shall be established for each coal production region where activity planning is conducted under the provisions of § 3420.3 of this title. The levels shall be developed separately for each region, but levels for 2 or more

regions may be developed at the same time as the Secretary deems appropriate. Leasing levels may be stated in terms of a range of values.

(f) The leasing levels established for any given region shall become the basis for the proposed action for study in the regional coal lease sale environmental impact statement prepared pursuant to § 3420.3-4 of this title. The Secretary's final decision on which coal lease tracts, if any, within a region to offer for sale, and the schedule for the offering of such tracts shall not be constrained by the established leasing levels; but rather shall be based on all information at the Secretary's disposal at the time of the decision.

§§ 3420.3, 3420.3-1, 3420.3-2, 3420.3-3, and 3420.3-4 [Removed]

34. Sections 3420.3, 3420.3-1, 3420.3-2, 3420.3-3 and 3420.3-4 are removed in their entirety.

§ 3420.4 Redesignated as § 3420.3

35. Section 3420.4 is renumbered § 3420.3.

§ 3420.4-1 Redesignated as § 3420.3-1 and Amended

36. Section 3420.4-1 is renumbered § 3420.3-1 and is amended by:

(a) Amending paragraph (a) by inserting after the word "ranking," in the first sentence the word "analyzing," and by removing the figure "§ 3420.1-5" in the second sentence and replacing it with the figure "§ 3420.1-4";

(b) Amending paragraph (b) by removing the words "shall, upon verification" and replacing them with the words "shall, upon verification"; and

(c) Adding a new paragraph (c) as follows:

* * * * *

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

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

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

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

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

§ 3420.4-2 Redesignated as § 3420.3-2 and Amended

37. Section 3420.4-2 is renumbered § 3420.3-2 and is amended by:

(a) Amending paragraph (a) by removing in the first sentence the figure "§ 3420.1-5" and replacing it with the figure "§ 3420.1-4" and by removing the last sentence of the paragraph in its entirety;

(b) Amending paragraph (b) by removing the second sentence of the paragraph in its entirety;

(c) Removing paragraphs (c), (d) and (e) in their entirety; and

(d) Renumbering paragraph (f) as paragraph (c) and amending it by adding at the end of the paragraph a new sentence "Data which are considered proprietary shall not be submitted as part of an expression of leasing interest."

§ 3420.4-3 Redesignated as § 3420.3-3 and Amended

38. Section 3420.4-3 is renumbered § 3420.3-3 and is amended by:

(a) Revising paragraph (a) as follows:

* * * * *

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

* * * * *

(b) Removing paragraphs (b) and (c) in their entirety;

(c) Renumbering paragraph (d) as paragraph (b) and amending it by removing the figure "§ 3420.1-4" and replacing it with the figure "§ 3420.1-3";

(d) Renumbering paragraph (e) as paragraph (c) and amending it by removing the figure "§ 3420.1-4" and replacing it with the figure "§ 3420.1-3";

(e) Renumbering paragraph (f) as paragraph (d) and amending it by removing the phrase "3435, 3436 and 3437" where it appears in the parenthesis and replacing it with the phrase "3435 and 3436";

(f) Renumbering paragraph (g) as paragraph (e) and amending it by removing from the first sentence the word "preliminary"; and

(g) Removing paragraph (h) in its entirety.

§ 3420.4-4 Redesignated as § 3420.3-4.

39. Section 3420.4-4 is renumbered 3420.3-4 and is revised to read:

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

(a)(1) Upon completion of tract delineation and preparation of the tract profiles, the regional coal team shall rank the tracts in classes of high, medium or low desirability for coal leasing. Three major categories of consideration shall be used in tract

ranking: coal economics; impacts on the natural environment; and socioeconomic impacts. The subfactors 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 this section. Tracts may also be ranked for other coal management purposes, such as emergency leasing under subpart 3425 of this title or exchanges under Subparts 3435 and 3436 of this title.

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

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

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

(5) A statement that descriptions of the tracts to be ranked are available shall be included with the notice announcing any regional coal team meeting at which those tracts shall be ranked. An opportunity for public comment on the tract rankings shall be provided during the regional coal team meeting.

(b)(1) Upon completion of tract ranking, the regional coal team shall select at least 1 combination of tracts that approximates the regional leasing level. The team shall also select tract combinations representing alternative leasing levels. The team may identify alternative combinations of tracts within a leasing level.

(2) The regional coal team may adjust the tract ranking and select tracts to reflect considerations including: (i) the compatibility of coal quality, coal type and market needs; (ii) environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future emergency lease situations; and (iv) special leasing opportunity requirements.

(c) After tract ranking and selection, a regional lease sale environmental impact statement on all tract combinations selected by the regional coal team for the various leasing levels and all other reasonable alternative leasing levels shall be prepared by the

Bureau of Land Management in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

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

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

(d) The results of the ranking and selection process, including the tract rankings, the tract selected and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement required by paragraph (c) of this section. Detailed information on each of the tracts shall be available for inspection in the Bureau of Land Management State offices that have jurisdiction over lands within the coal production region (See 43 CFR Subpart 1821).

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

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any appropriate revisions in the tract ranking and selection. The final regional lease sale environmental impact statement shall reflect such revisions.

(g) Upon completion and release of the final regional lease sale environmental impact statement, the regional coal team shall recommend specific tracts for lease sale and a lease sale schedule. The chairperson shall submit the recommendations to the Director. Any disagreement as to the recommendation among the team shall be documented and submitted by the chairperson along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his/her decision, together with the recommendation of the team and any recommendations the Director may wish to make.

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

planning updates, new tract delineations or increases or decreases in the leasing levels.

§§ 3420.4-5 and 3420.4-6 [Removed]

40. Sections 3420.4-5 and 3420.4-6 are removed in their entirety.

§ 3420.5 Redesignated as § 3420.4.

41. Section 3420.5 is renumbered § 3420.4.

§ 3420.5-1 Redesignated as § 3420.4-1 and Amended.

42. Section 3420.5-1 is renumbered § 3420.4-1 and is amended by removing the phrase "§§ 3420.5-2 through 3420.5-5" and replacing it with the phrase "§§ 3420.4-2 through 3420.4-5".

§ 3420.5-2 Redesignated as § 3420.4-2

43. Section 3420.5-2 is renumbered § 3420.4-2.

§ 3420.5-3 Redesignated as § 3420.4-3 and Amended

44. Section 3420.5-3 is renumbered § 3420.4-3 and is amended by revising the second sentence of paragraph (a) to read "The Secretary shall give the Governor 30 days to comment before adopting a regional lease sale schedule or, for lease applications, before publishing a notice of sale for any tract within the State."

§ 3420.5-4 Redesignated as § 3420.4-4 and Amended

45. Section 3420.5-4 is renumbered 3420.4-4 and is amended by revising the second sentence to read "The Secretary shall give the tribe 30 days in which to comment prior to adopting a lease sale schedule."

§ 3420.5-5 Redesignated as § 3420.4-5 and Amended

46. Section 3420.5-5 is § 3420.4-5 and is amended by revising the second sentence to read "The Secretary shall provide 30 days in which the Attorney General may advise the Secretary prior to adopting a lease schedule."

§§ 3420.6, 3420.6-1 and 3420.6-2 [Removed]

47. Sections 3420.6, 3420.6-1 and 3420.6-2 are removed in their entirety.

§ 3420.7 Redesignated as § 3420.5

48. Section 3420.7 is renumbered § 3420.5.

§ 3420.7-1 Redesignated as § 3420.5-1 and Amended

49. Section 3420.7-1 is renumbered § 3420.5-1 and is amended by revising the first sentence to read "Following completion of the requirements of §§ 3420.3 and 3420.4 of this title, the

Secretary shall announce the adoption of a final regional lease sale schedule."

§ 3420.7-2 Redesignated as § 3420.5-2 and Amended

50. Section 3420.7-2 is renumbered § 3420.5-2 and is amended by:

(a) Amending the first sentence of paragraph (a) by removing the figure "3420.5" and replacing it with the figure "§ 3420.4" and by removing all after the word "title" where it appears; and

(b) Amending paragraph (b) by removing the figure "§ 3420.4-4" and replacing it with the figure "§ 3420.3-4".

51. Section 3422.1 is revised as follows:

§ 3422.1 Fair market value and maximum economic recovery.

(a) Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value (FMV) appraisal and the maximum economic recovery (MER) of the tract or tracts proposed to be offered and on factors that may affect these 2 determinations.

Proprietary data marked as confidential may be submitted to the Minerals Management Service in response to the solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(b) The authorized officer shall request the Minerals Management Service to submit in writing a report containing information on the mining method evaluation, estimated coal reserves by bed, coal quality assessment, royalty and lease bond recommendations and an evaluation of the public comments on the FMV and MER.

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

(2) Minimum bonus bids shall not be less than \$100 per acre.

§ 3422.1-2 [Removed]

52. Section 3422.1-2 is removed in its entirety.

§ 3422.2 [Amended]

53. Section 3422.2 is amended by:

(a) Revising its title as follows:
"§ 3422.2 Notice of sale and detailed statement."

(b) Amending paragraph (b)(1) by removing the phrase "(whether by sealed or oral bids)" and by removing all after the phrase "being offered and" and replacing it with the phrase "the minimum bid(s) to be considered";

(c) Revising paragraph (b)(2) as follows:

(b) * * *

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

* * * * *

(d) Revising paragraph (c) to read:

* * * * *

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

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

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

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

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

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

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

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

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

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

* * * * *

(e) Revising paragraph (d) to read:

* * * * *

(d) Each successful bidder, if any, shall reimburse the United States for a

proportionate share of the cost of publishing the notice of sale as a condition of lease issuance.

54. A new § 3422.3-1 is added to read:

§ 3422.3-1 Bidding systems.

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

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

§ 3422.3-1 Redesignated as § 3422.3-2 and Amended.

55. Section 3422.3-1 is renumbered § 3422.3-2 and is amended by:

(a) Removing paragraph (a)(2) in its entirety and renumbering paragraph (a)(3) as paragraph (a)(2);

(b) Amending paragraph (b)(2) by removing the phrase "fair market value" and replacing it with the figure "FMV";

(c) Amending paragraph (b) by inserting in the second full sentence after the phrase "shall be" the phrase "in writing and" and by inserting after the second full sentence the sentence "The sale panel's recommendation and the authorized officer's written decision shall be entered in the case file for the offered tract;" and

(d) Amending paragraph (c) by removing the last sentence.

§ 3422.3-2 [Removed]

56. Section 3422.3-2 is removed in its entirety.

§ 3422.3-4 [Amended]

57. Section 3422.3-4 is amended by:

(a) Removing paragraph (a) in its entirety;

(b) Renumbering paragraph (b) as paragraph (a) and revising it as follows:

* * * * *

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

* * * * *

(c) Renumbering paragraph (c) as paragraph (b) and amending it by removing the phrase "a statement of coal holdings in the above form" and replacing it with the phrase "the currently required information";

(d) Renumbering paragraph (d) as paragraph (c) and amending it by removing from the second sentence the phrase "authorized officer" and replacing it with the word "Director";

(e) Renumbering paragraph (e) as paragraph (d) and amending it by removing the phrase "notifies the authorized officer that" and replacing it with the phrase "notifies the Director that" and by removing the figure "(f)" and replacing it with "(e)";

(f) Renumbering paragraph (f) as paragraph (e) and amending it by removing the phrase "notifies the authorized officer that" and replacing it with the phrase "notifies the Director that" and removing in subparagraph (1) the figure "(b)" and replacing it with the figure "(a)";

(g) Renumbering paragraph (g) as paragraph (f) and amending it by removing the figure "(b)" and replacing it with the figure "(a)"; and

(h) Renumbering paragraph (h) as paragraph (g) and revising it as follows:

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

58. Section 3422.4 is revised as follows:

§ 3422.4 Award of lease.

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

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

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment

basis. In a deferred bonus payment, the lessee shall pay the bonus in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next 4 anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

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

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

§ 3425.0-2 [Amended]

59. Section 3425.0-2 is amended by removing the phrase "§§ 3420.4 through 3420.7 of this title" and replacing it with the phrase "§§ 3420.3 through 3420.5-2 of this title."

§ 3425.0-6 [Removed]

60. Section 3425.0-6 is removed in its entirety.

§ 3425.1-4 [Amended]

61. Section 3425.1-4 is amended by:

(a) Revising paragraphs (a)(1) and (2) as follows:

(a) * * *

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

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

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

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

(b) Revising paragraph (b) to read:

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

(c) Removing paragraph (c) in its entirety.

62. Section 3425.1-5 is revised to read:

§ 3425.1-5 Leasing outside coal production regions.

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

§ 3425.1-7 [Amended]

63. Section 3425.1-7 is amended by:

(a) Amending paragraph (b)(1) by removing the phrase " (which may be available from state or Federal sources)"; and

(b) Amending paragraph (d) by removing the phrase "(See 43 CFR Subpart 3427)" and replacing it with the phrase "in accordance with subpart 3427 of this title."

§ 3425.1-8 [Amended]

64. Section 3425.1-8 is amended by:

(a) Amending paragraph (a) by removing the word "when" and replacing it with the word "if"; and

(b) Amending paragraph (a)(2) by removing the phrase "violate the integrity of the normal leasing process" and replacing it with the phrase "compromise the regional leasing process described in § 3420.3 of this title".

65. Subpart 3425 is amended by adding a new § 3425.1-9 to read:

§ 3425.1-9 Modification of application area.

The authorized officer may add or delete lands from an area covered by an application for any reason he/she determines to be in the public interest.

§ 3425.2 [Amended]

66. Section 3425.2 is amended by removing from the first sentence the phrase "No lease shall be issued" and replacing it with the phrase "No lease shall be offered for sale" and by removing the figure "§ 3420.1-5" and replacing it with the figure "§ 3420.1-4".

§ 3425.3 [Amended]

67. Section 3425.3 is amended by:

(a) Revising paragraph (a) as follows:

(a) Before a lease sale may be held under this subpart, the authorized officer shall prepare an environmental assessment or environmental impact statement of the proposed lease area in accordance with 40 CFR 1500 through 1508.

(b) Removing paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) in their entirety.

68. Section 3425.4 is revised as follows:

§ 3425.4 Consultation and sale procedures.

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

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

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

69. Section 3427.0-7 is revised as follows:

§ 3427.0-1 Purpose.

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

70. Section 3427.1 is revised as follows:

§ 3427.1 Deposits subject to consent.

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

§ 3427.2 [Amended]

71. Section 3427.2 is amended by:

(a) Revising paragraph (a)(1) to read:

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR Subpart 1821). For lands offered for lease sale pursuant to subpart 3420 of this title, consents or written evidence

thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the **Federal Register**. For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

(b) Removing paragraph (d) in its entirety;

(c) Renumbering paragraph (e) as paragraph (d) and revising it to read:

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

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

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

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

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

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

(d) Renumbering paragraph (f) as paragraph (e) and amending it by removing the word "transferable";

(e) Renumbering paragraph (g) as paragraph (f) and revising it to read:

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

(g) Renumbering paragraph (h) as paragraph (g) and amending it by removing the phrase "State Director" and replacing it with the phrase "authorized officer";

(h) Renumbering paragraph (i) as paragraph (h) and revising it to read:

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

(i) Renumbering paragraph (j) as paragraph (i) and revising it to read:

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

(i) Adding a new paragraph (j) to read:

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

72. Section 3427.4 is revised to read:

§ 3427.4 Pre-existing consents.

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

73. A new § 3427.5 is added to read:

§ 3427.5 Unqualified surface owners.

(a) Lease tracts involving surface owners who are not qualified (see § 3400.0-5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see section 9 of

the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).

(b) The provisions of §§ 3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.

PART 3430—NONCOMPETITIVE LEASES

§ 3430.0-3 [Amended]

74. Section 3430.0-3 is amended by removing paragraph (c) in its entirety.

75. Section 3430.0-7 is revised as follows:

§ 3430.0-7 Scope.

Section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands. Therefore, these regulations apply only to preference right lease applications based on prospecting permits issued prior to August 4, 1976. The surface owner consent provisions of section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) do not apply to preference right lease applications.

76. Section 3430.2-1 is amended by:

- Revising the first paragraph and paragraph (a) of the section as follows:

§ 3430.2-1 Initial showing.

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

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

- Amending paragraph (c)(2) by adding the word "and" after the semicolon at the end;

- Amending paragraph (c)(3) by removing the semicolon and replacing it with a period;

- Removing paragraphs (c)(4), (c)(5) and (c)(6) in their entirety; and

- Adding a new paragraph (d) as follows:

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

§ 3430.2-2 [Removed]

77. Section 3430.2-2 is removed in its entirety.

§ 3430.2-3 Redesignated as § 3430.2-2 and Amended

78. Section 3430.2-3 is renumbered § 3430.2-2 and is amended by removing the phrase "§§ 3430.2-1 and 3430.2-2" and replacing it with the figure "§ 3430.2-1".

§ 3430.3-1 [Amended]

79. Section 3430.3-1 is amended by adding at the end of the first sentence in paragraph (c)(3) the phrase "in a land use analysis" and by removing the last sentence of paragraph (c)(3).

§ 3430.3-2 [Amended]

80. Section 3430.3-2 is amended by:

- Revising paragraph (b) as follows:

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

- Removing paragraphs (c), (d) and (e) in their entirety.

§ 3430.4-1 [Amended]

81. Section 3430.4-1 is amended by:

- Amending paragraph (a) by removing the word "promptly" and replacing it with the phrase "if not previously submitted";

- Amending paragraph (b) by removing the phrase "applicant with the request" and replacing it with the phrase "applicant, separately or with a request";

- Amending paragraph (c) by revising subparagraph (3) to read:

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

- Revising paragraph (d) to read:

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

§ 3430.5-1 [Amended]

82. Section 3430.5-1(a) is amended by:

- Revising paragraph (a)(3) to read:

- The applicant otherwise failed to meet statutory or regulatory requirements; or

- Adding a new paragraph (a)(4) to read:

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

83. Section 3430.5-3 is revised to read:

§ 3430.5-3 Determination to lease.

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

- Coal has been discovered in commercial quantities on the lands applied for;

- 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

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

84. Section 3430.5-4 is revised to read:

§ 3430.5-4 Lease exchange.

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

(b) Upon the request of the authorized officer, the Secretary may initiate lease exchange procedures under Subpart 3435 of this title if:

- The lands under application have been shown to contain commercial quantities of coal;

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

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

85. Section 3430.6-1 is revised to read:

§ 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.

§ 3430.6-3 [Removed]

86. Section 3430.6-3 is removed in its entirety.

§ 3430.6-4 Redesignated as 3430.6-3 and Amended.

87. Section 3430.6-4 is renumbered § 3430.6-3 and is amended by removing the phrase "subpart 3400.0-5 of this title" and replacing it with the phrase "30 CFR 211.2".

§ 3431.2 [Amended]

88. Section 3431.2(c) is amended by removing the word "surface" where it first appears and replacing it with the word "Surface" and by adding immediately after the phrase "authorized officer" the phrase "of the surface management agency".

89. Section 3435.0-1 is amended by inserting after the phrase "leased lands" the phrase "or portions of leased lands".

§ 3435.0-3 [Amended]

90. Section 3435.0-3(b) is amended by:

(a) Removing the word "and" at the end of paragraph (b)(2);

(b) Removing the period at the end of paragraph (b)(3) and replacing it with a semicolon; and

(c) Adding new paragraphs (b) (4) and (5) to read:

- (b) * * *
- (4) Section 1 of the Act of October 19, 1980 (94 Stat. 2269); and
- (5) Section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (94 Stat. 2272).

§ 3435.1 [Amended]

91. Section 3435.1 is amended by:

(a) Amending the introductory paragraph by inserting after the phrase "preference right lease application" where it first appears the phrase "or portions thereof";

(b) Revising paragraph (c) to read:

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

(c) Removing the sentence following paragraph (e).

§ 3435.2 [Amended]

92. Section 3435.2 is amended by:

(a) Revising paragraph (b) to read:

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

(b) Amending paragraph (c) by removing the word "appropriate" and replacing it with the phrase "in the public interest."; and

(c) Amending paragraph (d) by removing the phrase "and 3432.2(b) of this title" and replacing it with the phrase "§ 3432.2(b) and § 3432.3(a) of this title."

§ 3435.3-1 [Amended]

93. Section 3435.3-1 is amended by:

(a) Amending paragraph (b) by removing the phrase "include a statement of" and replacing it with the word "state";

(b) Revising paragraph (c) to read:

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

(d) Inserting a new paragraph (d) to read:

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

(d) Renumbering paragraph (d) as paragraph (e).

§ 3435.3-2 [Amended]

94. Section 3435.3-2(a) is revised to read:

(a) The lessee or preference right lease applicant wishing to negotiate an

exchange shall so reply in writing. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or coal lease modification.

§ 3435.3-3 [Amended]

95. Section 3435.3-3 is amended by:

(a) Amending paragraph (a) by removing the colon and adding the phrase "negotiate an exchange consistent with § 3435.1 of this title." and removing subparagraphs (1) through (4) in their entirety; and

(b) Amending paragraph (b) by removing the figure "§ 3420.2-3" and replacing it with the figure "§ 3420.1".

96. Section 3435.3-5 is revised to read:

§ 3435.3-5 Notice of public hearing.

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

§ 3435.3-6 [Amended]

97. Section 3435.3-6(a) is amended by removing the phrase "at least 45 days after this notification" and replacing it with the phrase "45 days".

98. Section 3435.4 is revised to read:

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

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

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

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

conditions of the coal lease bidding rights to be granted in exchange; and

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

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

(c) The exchange lease or lease modification shall be subject to all relevant provisions of group 3400 or 3500 of this title, 30 CFR Chapter VII, Subchapter D and 30 CFR Part 211, as appropriate.

99. Subpart 3436 of Part 3430 is revised to read:

* * * * *

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

Sec.

3436.0-1 Purpose.

3436.0-2 Objective.

3436.0-3 Authority.

3436.0-5 Definitions.

3436.1 Coal lease exchanges.

3436.1-1 Qualified lease proponents.

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3436.1-3 Exchange procedures.

3436.2 Fee coal exchanges.

3436.2-1 Qualified exchange proponents.

3436.2-2 Federal coal deposits subject to disposal through exchange.

3436.2-3 Exchange procedures.

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

§ 3436.0-1 Purpose.

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

§ 3436.0-2 Objective.

(a) The objective of this subpart is to provide relief to persons holding leases for Federal coal deposits or fee title to coal deposits which underlie or are near alluvial valley floors and which cannot be mined through surface mining

operations under section 510(b)(5) of the Surface Mining Control and Reclamation Act, through the exchange of lands, or interests therein, pursuant to the authority granted by the statutory provision.

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

§ 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)).

§ 3436.0-5 Definitions.

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

§ 3436.1 Coal lease exchanges.

§ 3436.1-1 Qualified lease proponents.

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

(1) Hold a Federal coal lease or preference right lease application

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3436.2 Fee coal exchanges.

§ 3436.2-1 Qualified exchange proponents.

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

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

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

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

evidence of the existence of an alluvial valley floor.

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

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

§ 3436.2-3 Exchange procedures.

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

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

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

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

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

(f) The owner of the coal deposits underlying or near an alluvial valley floor shall bear all administrative costs

of the exchange, including the cost of establishing the value of each deposit involved in the exchange.

§§ 3437.0-1 through 3437.2 (Subpart 3437) [Removed]

100. Subpart 3437 of Part 3430 is removed in its entirety.

PART 3440—LICENSES TO MINE

§ 3440.1-4 [Amended]

101. Section 3440.1-4 is amended by amending paragraph (c)(3) by removing the third and fourth sentences.

§ 3440.1-5 [Removed]

102. Section 3440.1-5 is removed in its entirety.

§ 3440.1-6 Redesignated § 3440.1-5 and Amended

103. Section 3440.1-6 is renumbered § 3440.1-5 and is amended by removing the phrase "regulatory authority" and replacing it with the phrase "Surface Mining Officer".

104. A new § 3440.1-6 is added to read:

§ 3440.1-6 Cancellation or forfeiture.

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

PART 3450—MANAGEMENT OF EXISTING LEASES

§ 3451.1 [Amended]

105. Section 3451.1 is amended by:

(a) Amending paragraph (a) by removing subparagraph (3) in its entirety;

(b) Removing paragraph (b) in its entirety;

(c) Renumbering paragraph (c) as paragraph (b) and amending it by removing the phrase "lease shall be readjusted" and replacing it with the phrase "lease shall not be readjusted retroactively", and by removing all after the phrase "Act of 1976"; and

(d) Renumbering paragraphs (d) and (e) as paragraphs (c) and (d).

§ 3451.2 [Amended]

106. Section 3451.2 is amended by:

(a) Removing paragraph (b) in its entirety;

(b) Renumbering paragraph (c) as paragraph (b) and amending it by adding at the end thereof the sentence "The effective date of the readjusted lease shall not be affected by the filing of objections to any of the readjusted terms and conditions.";

(c) Renumbering paragraph (d) as paragraph (c) and amending it by inserting between the words "or" and "30 days" the phrase, "if the Attorney General desires to review the readjustment,";

(d) Inserting a new paragraph (d) to read:

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

(e) Revising paragraph (e) to read:

"(e) The readjusted lease terms and conditions shall be effective pending the outcome of the appeal, unless the authorized officer

provides otherwise. Upon the filing of an appeal, the obligation to pay royalties and rentals when due under the readjusted lease shall be suspended pending the outcome of the appeal.

However, during the pendency of the appeal, royalties and rentals shall accrue under the readjusted lease terms and shall be payable if the decision is upheld on appeal, plus interest at the rate specified for late payments in 30 CFR Part 211."

107. Section 3452.1-1 is revised to read:

§ 3452.1-1 General.

The lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres) or any bed of the coal deposit therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished. If the authorized officer accepts the relinquishment of any coal deposits in a lease, the coal reserves shall be adjusted in accordance with 30 CFR Part 211.

108. Section 3452.1-3 is revised to read:

§ 3452.1-3 Acceptance.

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

§ 3452.2-1 [Amended]

109. Section 3452.2-1 is amended by:

(a) Revising paragraph (a)(2) to read:

(a) * * *

(2) fails to comply with any applicable general regulations; or

* * *

(b) Removing paragraph (b) in its entirety; and

(c) Renumbering paragraph (c) as paragraph (b).

§ 3452.3 [Amended]

110. Section 3452.3 is amended by:

(a) Amending paragraph (a) by inserting after the word "issued" the phrase "or readjusted"; and

(b) Amending paragraph (b) by inserting before the word "cancelled" the word "relinquished,".

111. Section 3453.1 is revised to read:

§ 3453.1 Qualifications.

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

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

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

§§ 3453.1-1, 3453.1-2, 3453.1-3, 3453.1-4 and 3453.1-5 [Removed]

112. Sections 3453.1-1, 3453.1-2, 3453.1-3, 3453.1-4 and 3453.1-5 are removed in their entirety.

113. Section 3452.2-1 is amended by removing the phrase "lease or any interest in a lease," and replacing it with the phrase "lease, preference right lease application or exploration license or any interest in a lease or license,".

§ 3453.2-2 [Amended]

114. Section 3453.2-2 is amended by:

(a) Revising paragraphs (a) and (b) to read:

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

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

(b) Amending paragraph (e) by inserting after the word "lease" the phrase "license or application";

(c) Amending paragraph (g) by removing the phrase "so treated,

consistent with the Freedom of Information Act." and replacing it with the phrase "treated in accordance with the laws and regulations governing the confidentiality of such information."

115. Section 3453.2-3 is revised to read:

§ 3453.2-3 Filing location and fee.

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

116. Section 3453.2-4 is revised to read:

§ 3453.2-4 Bonds.

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

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

§ 3453.2-5 [Removed]

117. Section 3453.2-5 is removed in its entirety.

§ 3453.2-6 Redesignated as § 3453.2-5

118. Section 3453.2-6 is renumbered 3453.2-5 and is revised to read:

§ 3453.2-5 Effect of partial assignment.

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

§ 3453.3-1 [Amended]

119. Section 3453.3-1 is revised to read:

§ 3453.3-1 Conditions for approval.

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

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

(2) The lease bond is insufficient;

(3) The filing fee has not been submitted;

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

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

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

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

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

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

(1) The exploration bond is sufficient;

(2) The filing fee has been submitted; and

(3) The license account is in good standing.)

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

§ 3453.3-2 [Amended]

120. Section 3453.3-2 is amended by:

(a) Amending paragraph (a) by removing the phrase "an application for"; and

(b) Revising paragraph (b) to read:

* * * * *

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

§ 3453.3-3 [Amended]

121. Section 3453.3-3 is amended by inserting after the word "requests" the phrase "in writing."

122. Section 3453.3-4 is amended by inserting the figure "(a)" in front of the existing paragraph and adding a new paragraph (b) to read:

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

PART 3460—ENVIRONMENT**§ 3461.0-7 [Amended]**

123. Section 3461.0-7 is amended by removing the figure "§ 3400.0-5(vv)" and replacing it with the figure "§ 3400.0-5(mm)" and removing the last sentence of the section in its entirety.

§ 3461.1 [Amended]

124. Section 3461.1 is amended by:

(a) Amending paragraph (a)(1) by removing the last sentence;

(b) Amending paragraph (b)(1) by removing the phrase ", or for agricultural crop production";

(c) Amending paragraph (c)(2) by inserting a new subparagraph (iii) to read:

* * * * *

(c) * * *

(2) * * *

(iii) If, after public notice and opportunity for public hearing in the locality, a written finding is made by the authorized officer that the interests of the public and the landowners affected by mining within 100 feet of a public road will be protected.

* * * * *

(d) Further amending paragraph (c)(2) by renumbering the existing subparagraph (iii) as subparagraph (iv) and removing from that subparagraph the word "buildings" and replacing it with the word "dwellings";

(e) Amending paragraph (i) by adding a new subparagraph (3) to read:

* * * * *

(i) * * *

(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.

* * * * *

(f) Amending paragraph (k) by adding a new subparagraph (3) to read:

* * * * *

(k) * * *

(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.

* * * * *

(g) Amending paragraph (l) by adding a new subparagraph (3) to read:

* * * * *

(l) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(h) Amending paragraph (m) by adding a new subparagraph (3) to read:

* * * * *

(m) * * *

(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.

* * * * *

(i) Amending paragraph (n) by adding a new subparagraph (3) to read:

* * * * *

(n) * * *

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(j) Amending paragraph (p) by revising subparagraph (1) to read:

* * * * *

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal and special floodplains (100-year recurrence interval) on which the surface management agency determines that mining could not be undertaken without substantial threat of loss of life or property shall be considered unsuitable for all or certain stipulated methods of coal mining; and

* * * * *

(k) Amending paragraph (q) by revising subparagraph (2) to read:

(q) * * *

(2) *Exception.* A lease may be issued where the surface management agency in consultation with the municipality (incorporated entity) or the responsible governmental unit determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree.

§ 3461.2 [Amended]

125. Section 3461.2(b) is amended by removing the last sentence of the paragraph.

126. Section 3461.3-1(a) is revised to read:

§ 3461.3-1 Assessment and land use planning.

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

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

§ 3461.3-2 [Amended]

127. Section 3461.3-2 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.2-6" and replacing it with the phrase "§§ 3420.1-6 and 3420.1-7";

(b) Amending paragraph (b) by removing the last sentence of that paragraph; and

(c) Amending paragraph (c) by removing the last sentence of that paragraph.

§ 3461.3-3 [Removed]

128. Section 3461.3-3 is removed in its entirety.

129. Section 3461.4-1 is revised to read:

§ 3461.4-1 Application of criteria on unleased lands.

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

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

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

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

130. Section 3461.4-2 is revised to read:

§ 3461.4-2 Application of criteria on leased lands.

The unsuitability criteria shall not be applied to leased lands.

§ 3461.5 [Removed]

131. Section 3461.5 is removed in its entirety.

§ 3461.6 Redesignated as § 3461.5 and Amended

132. Section 3461.6 is renumbered § 3461.5 and is amended by inserting after the word "mining", where it first appears in paragraph (a), the word "operations" and by adding at the end of paragraph (a) the phrase "and under 30 CFR 211.2(a)."

§ 3465.0-2 [Removed]

133. Section 3465.0-2 is removed in its entirety.

§ 3465.1 [Amended]

134. Section 3465.1(a) is amended by removing the phrase "permit (30 CFR Part 741)" and replacing it with the phrase "resource recovery and protection plan and mining permit (30 CFR Parts 211 and 741)".

§ 3465.2 [Removed]

135. Section 3465.2 is removed in its entirety.

§ 3465.3 Redesignated as § 3465.2

136. Section 3465.3 is renumbered § 3465.2.

§ 3465.3-1 Redesignated as § 3465.2-1 and Amended

137. Section 3465.3-1 is renumbered § 3465.2-1 and is amended by removing the phrase "inspectors from the Surface Mining Officer" and replacing it with the phrase "their authorized representatives".

§ 3465.3-2 Redesignated as § 3465.2-2

138. Section 3465.3-2 is renumbered § 3465.2-2.

§ 3465.3-3 Redesignated as § 3465.2-3 and Amended

139. Section 3465.3-3 is renumbered § 3465.2-3 and is amended by removing

the phrase "30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D" and replacing it with the phrase "30 CFR Chapter VII, Subchapter D, or by the Mining Supervisor in accordance with 30 CFR Part 211,".

§§ 3465.4, 3465.5, and 3465.6 [Removed]

140. Sections 3465.4, 3465.5 and 3465.6 are removed in their entirety.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

§ 3471.2-1 [Amended]

141. Section 3471.2-1 is amended by:

(a) Revising paragraph (b) to read:

(b) Any sale or conveyance of acquired lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under the Mineral Leasing Act for Acquired Lands.

(b) Amending paragraph (c) by removing the phrase "act subject in each case to such appropriate conditions as may be prescribed" and replacing it with the word "Act."; and

(c) Amending paragraph (d) by removing the phrase "(43 CFR 3420.6)" at the end of the paragraph.

§ 3471.2-2 [Amended]

142. Section 3471.2-2(b) is amended by removing the first sentence of that paragraph.

§ 3471.3-1 [Removed]

143. Section 3471.3-1 is removed in its entirety.

§ 3471.3-2 Redesignated as § 3471.3-1 and Amended

144. Section 3471.3-2 is renumbered § 3471.3-1 and is amended by:

(a) Revising paragraph (b) to read:

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws may be dismissed promptly as a party by showing that he/she holds and acquired his/her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws.

(b) Amending paragraph (c) by removing the phrase ", during any such proceeding,".

§ 3471.3-3 Redesignated as § 3471.2-3

145. Section 3471.3-3 is renumbered § 3471.3-2.

§ 3471.4 [Amended]

146. Section 3471.4 is amended by removing the phrase "(See 43 CFR

3472.1-1(g))" and replacing it with the phrase "(See 43 CFR 3472.1-2(g))".

§ 3472.1-2 [Amended]

147. Section 3472.1-2 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3472.1-2" and replacing it with the figure "§ 3472.1-3"; and

(b) Revising paragraph (e) to read:

After August 4, 1986, no lease shall be issued to any applicant or bidder and no existing lease shall be transferred to any party that holds and has held for 10 years any lease from which coal is not being produced, except as authorized under the advance royalty payment provisions of 30 CFR Part 211, in commercial quantities as that term is defined in 30 CFR Part 211.

§ 3472.1-3 [Amended]

148. Section 3472.1-3 is amended by revising paragraph (b)(1) to read:

(b)(1) In computing acreage held, owned or controlled, the accountable acreage of a party holding, owning or controlling an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. Any subsidiary, affiliate or person controlled by or under common control with any corporation, person or association holding, owning or controlling a Federal coal lease shall be charged with lease acreage to the same extent as such corporation, person or association. The accountable acreage of a party holding, owning or controlling an interest in a corporation or association shall be that party's proportionate part of the acreage held, owned or controlled by such corporation or association. However, no party shall be charged with its pro rata share of any acreage held, owned or controlled by any corporation or association unless that party is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such corporation or association.

§ 3472.2-2 [Amended]

149. Section 3472.2-2 is amended by:

(a) Revising paragraph (c) to read:

(c) If the applicant or bidder for a lease or license to mine is a corporation, it shall submit statements showing:

- (1) The state of incorporation;
- (2) That the corporation is authorized to hold leases or licenses to mine;

(3) The names of the officers authorized to act on behalf of the corporation;

(4) The percentage of the corporation's voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and

(5) The name, address, citizenship and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Applications on behalf of a corporation executed by other than an officer named under paragraph (c)(3) of this section shall be accompanied by proof of the signatory's authority to execute the instrument. The applicant shall submit the same information as is required in the preceding paragraph for any of its corporate stockholders holding, owning or controlling 10 percent or more of its stock of any class.

(b) Adding new paragraphs (f) and (g) to read:

(f) The Department reserves the right to request any supplementary information that is needed to accredit acreage under § 3472.1-3 of this title.

(g) Any applicant or bidder who has previously filed a qualification statement may, if it certifies that the prior statement remains complete, current and accurate, submit a serial number reference to the record and office where the prior statement is filed.

§ 3472.2-5 [Amended]

150. Section 3472.2-5(a) is amended by removing the figure "§ 3420.1-4" and replacing it with the figure "§ 3420.1-3" in the two places where it appears.

151. Section 3473.1-1 is amended by removing the phrase "Geological Survey" and replacing it with the phrase "Minerals Management Service".

§ 3473.1-2 [Amended]

152. Section 3473.1-2(b) is amended by removing the phrase "Payments of all rentals" and replacing it with the word "Rentals" and by adding at the end of the paragraph the phrase ", unless terms of the lease provide otherwise."

§ 3473.2-1 [Amended]

153. Section 3473.2-1(a) is amended by revising subparagraph (3) to read:

(a) * * *

(3) A filing of fee of \$50 per lease shall accompany each instrument of transfer of a lease or an interest therein.

154. * * *

§ 3473.3-1 is amended by:

(a) Amending paragraph (b) by removing the phrase "production or advance"; and

(b) Adding a new paragraph (d) to read:

(d) Rentals paid for any lease year commencing prior to the effective date of the first lease readjustment occurring after August 4, 1976, shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of the readjustment shall not be credited against royalties.

§ 3473.3-2 [Amended]

155. Section 3473.3-2 is amended by:

(a) Revising paragraph (a)(3) to read:

(3) A lease shall require payment of a royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the Minerals Management Service may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

(b) Revising paragraph (b) to read:

(b) 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 in accordance with 30 CFR Part 211.

(c) Revising paragraph (c) to read:

(c) An overriding royalty interest, production payment or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in a Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he/she shows that he/she has made substantial investments for improvements directly related to exploration, development and mining on

the lands covered by the transfer that would justify a higher payment.

(d) Revising paragraph (d) to read:

(d) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the Mining Supervisor in accordance with 30 CFR Part 211.

§ 3473.4 [Amended]

156. Section 3473.4 is amended by:

(a) Amending paragraph (a) by adding at the end of the first sentence of the paragraph the phrase "in accordance with 30 CFR Part 211" and by removing the second sentence of the paragraph in its entirety; and

(b) Removing paragraphs (c), (d) and (e) in their entirety.

§ 3474.1 [Amended]

157. Section 3474.1 is amended by:

(a) Revising paragraph (a)(2) to read:

(a) * * *

(2) Cash bond; or

(b) Revising paragraph (c) to read:

(c) The bonding obligation for a new lease may be met by an adjustment to an existing LMU bond covering the other leases within the same LMU.

§ 3474.2 [Amended]

158. Section 3474.2 is amended by:

(a) Revising paragraph (a) to read:

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, shall be furnished in the amount determined by the authorized officer. Except as provided in § 3474.3(b) of this title, that bond shall not cover reclamation within a permit area.

(b) Amend paragraph (b) by removing the figure "§ 3410.3-5" and replacing it with the figure "3410.3-4"; and

(c) Adding a new paragraph (c) to read:

(c)(1) Upon approval of an LMU including more than 1 Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain an LMU bond covering all of the terms and conditions of every Federal lease within the LMU, except for reclamation within the mining permit area unless the condition in § 3474.3(b) of this title applies. All LMU bonds shall be furnished in the amount recommended by the Mining Supervisor.

(2) When an LMU is terminated, the LMU bond shall terminate. Individual leases remaining from the LMU shall be covered by lease bonds in the manner prescribed by the Mining Supervisor.

§ 3474.3 [Amended]

159. Section 3474.3 is amended by:

(a) Revising paragraph (b) to read:

(b)(1) In setting or adjusting individual lease bond amounts, the authorized officer shall assure that the lease bond covers reclamation within a permit area where the Surface Mining Officer, because of the absence of a cooperative agreement governing Federal lands within that state, notifies the authorized officer that the lease bond should cover that reclamation.

(2) After consultation with the Surface Mining Officer, the authorized officer may release the amount of any outstanding bond which is related to, and is not necessary to secure, the performance of reclamation within a permit area.

(c) Removing paragraph (c) in its entirety.

160. Subpart 3475 is amended by inserting a new § 3475.1 to read:

§ 3475.1 Lease form.

Leases shall be issued on a standard form approved by the Director. The authorized officer may modify those provisions of the standard form which are not required by statute or

regulations and may add such additional stipulations and conditions as he/she deems appropriate.

§§ 3475.1, 3475.2 and 3474.3 Redesignated as §§ 3475.2, 3475.3 and 3475.4

161. Sections 3475.1, 3475.2, and 3474.3 are renumbered sections 3475.2, 3475.3, and 3475.4 respectively.

§ 3475.4 Redesignated as § 3475.5

162. Section 3475.4 is renumbered § 3475.5 and is revised to read:

§ 3475.5 Diligent development and continued operation.

In accordance with 30 CFR Part 211, each lease shall require:

(a) Diligent development; and

(b) Either (1) continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee, or (2) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advanced royalty."

§ 3475.5 Redesignated as § 3475.6

163. Section 3475.5 is renumbered § 3475.6 and is revised to read:

§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied by the Minerals Management Service in accordance with 30 CFR 211.80.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

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