

#### § 3422.4

sealed envelope and shall be transmitted in that form to the Attorney General.

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

#### § 3422.4 Award of lease.

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

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

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

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

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

[47 FR 33141, July 30, 1982]

#### 43 CFR Ch. II (10-1-04 Edition)

### Subpart 3425—Leasing on Application

#### § 3425.0-1 Purpose.

#### § 3425.0-2 Objective.

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

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

#### § 3425.1 Application for lease.

##### § 3425.1-1 Where filed.

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

##### § 3425.1-2 Contents of application.

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

##### § 3425.1-3 Qualifications of the applicant.

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

##### § 3425.1-4 Emergency leasing.

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

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

(i) The Federal coal is needed within 3 years (A) to maintain an existing mining operation at its current average annual level of production on the

date of application or (B) to supply coal for contracts signed prior to July 19, 1979, as substantiated by a complete copy of the supply or delivery contract, or both; or

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

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

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

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

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

**§ 3425.1-5 Leasing outside coal production regions.**

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

[47 FR 33141, July 30, 1982]

**§ 3425.1-6 Hardship leases.**

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

**§ 3425.1-7 Preliminary data.**

(a) Any application for a lease shall contain preliminary data to assist the authorized officer in conducting an en-

vironmental analysis as described in § 3425.3 of this title.

(b) Such preliminary data shall include:

(1) A map, or maps, showing the topography, physical features and natural drainage patterns, existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines and drill holes; to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources that may be used in the proposed operations and facilities.

(2) A narrative statement, including:

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

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

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

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

(v) A brief description of the proposed measures to be taken to control or prevent fire and to mitigate or prevent soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, adverse impacts to the social and infrastructure systems of

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local communities, and hazards to public health and safety; reclaim the surface; and meet other applicable laws and regulations. The applicant may submit other pertinent information that the applicant wishes to have considered by the authorized officer;

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

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

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

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

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

### § 3425.1-8 Rejection of applications.

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

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

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

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

### § 3425.1-9 Modification of application area.

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

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

### § 3425.2 Land use plans.

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

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

### § 3425.3 Environmental analysis.

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

(b) For lease applications involving lands in the National Forest System, the authorized officer shall submit the lease application to the Secretary of

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Agriculture for consent, for completion or consideration of an environmental assessment and for the attachment of appropriate lease stipulations, and for the making of any other findings prerequisite to lease issuance. (43 CFR 3400.3, 3461.1(a))

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

### § 3425.4 Consultation and sale procedures.

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

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

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

[47 FR 33142, July 30, 1982]

### § 3425.5 Lease terms.

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

## Subpart 3427—Split Estate Leasing

### § 3427.0-1 Purpose.

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

[47 FR 33142, July 30, 1982]

### § 3427.0-3 Authority.

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

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of

1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M-36909, 86 I.D. 28 (1979).

### § 3427.0-7 Scope.

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

(a) To preference right lease applications; and

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

### § 3427.1 Deposits subject to consent.

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

[47 FR 33142, July 30, 1982]

### § 3427.2 Procedures.

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

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

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

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name,