

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

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

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

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

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

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

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

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

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

necessary, from erosion and compacting).

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

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

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

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

[52 FR 25799, July 8, 1987]

#### § 3430.5 Determination of entitlement to lease.

##### § 3430.5-1 Rejection of application.

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

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

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

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

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

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

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

(c) The authorized officer may reject any preference right lease application

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

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

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

(ii) Of the reasons for the proposed rejection;

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

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

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

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

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

## § 3430.5-2 Appeals, lack of showing.

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

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

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that

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commercial quantities of coal exist in the proposed lease area.

## § 3430.5-3 Determination to lease.

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

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

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

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

[47 FR 33143, July 30, 1982]

## § 3430.5-4 Lease exchange.

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

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

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

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

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

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