

## § 3425.4

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

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

EFFECTIVE DATE NOTE: At 64 FR 52243, Sept. 28, 1999, § 3425.3 was amended by adding two sentences at the end of paragraph (a), effective Oct. 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]

## 43 CFR Ch. II (10-1-99 Edition)

### § 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, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

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

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

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

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

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

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

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

or that the refusal to consent is accurate.

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

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

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

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

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