

#### **§ 3430.5-4**

damage can be avoided or acceptably mitigated.

[47 FR 33143, July 30, 1982]

#### **§ 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, 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]

#### **§ 3430.6 Lease issuance.**

##### **§ 3430.6-1 Lease terms.**

Each preference right lease shall be subject to the terms provided for Federal coal leases established in part 3470 of this title.

[47 FR 33144, July 30, 1982]

##### **§ 3430.6-2 Bonding.**

The lease bond for a preference right lease shall be set in accordance with subpart 3474 of this title.

##### **§ 3430.6-3 Duration of leases.**

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in § 3483.1 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end

#### **43 CFR Ch. II (10-1-14 Edition)**

of each period of 10 years thereafter in accordance with subpart 3451 of this title.

[44 FR 42628, July 19, 1979. Redesignated and amended at 47 FR 33144, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

#### **§ 3430.7 Trespass.**

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

### **Subpart 3431—Negotiated Sales: Rights-of-Way**

#### **§ 3431.0-1 Purpose.**

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*).

#### **§ 3431.0-3 Authority.**

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

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 30, 1978 (30 U.S.C. 201(a)(1)).

#### **§ 3431.1 Qualified purchaser.**

Any person who has acquired or applied for a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 which requires the removal of coal deposits as a necessary incident to development, construction or use of the right-of-way is qualified to purchase the coal to be removed.

#### **§ 3431.2 Terms and conditions of sale.**

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject to the same requirements for health