

**§ 3435.3-6**

**§ 3435.3-6 Consultation with Governor.**

(a) The Secretary shall notify the Governor of each state in which lands in the proposed exchange are located of the terms of the exchange and the Secretary's preliminary findings why the exchange is in the public interest. The Secretary shall give each Governor 45 days to comment on the proposal prior to consummating the exchange.

(b) If, within the 45 day period, the Governor(s), in writing, objects to an exchange that involves leases or lease rights in more than one state, the Secretary will not consummate the exchange for 6 months from the date of objection. The Governor(s) may during this 6-month period submit a written statement why the exchange should not be consummated, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

**§ 3435.3-7 Consultation with the Attorney General.**

In any exchange which, if consummated, shall result in the issuance of a Federal coal lease, the Secretary, after issuing an exchange notice under § 3435.3-1 of this title and before issuance of a written decision under § 3435.4 of this title.

(a) Shall require the lessee or lease applicant to submit the information in § 3422.3-4 of this title; and

(b) If the Attorney General, within 30 days, objects to lease issuance, shall not issue the exchange lease except after complying with the provisions of § 3422.3-4(f)(2) of this title.

**§ 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 stipula-

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tions 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 and 30 CFR Chapter VII, Subchapter D as appropriate.

[47 FR 33144, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

**Subpart 3436—Coal Lease and Coal Land Exchanges: Alluvial Valley Floors**

SOURCE: 47 FR 33145, July 30, 1982, unless otherwise noted.

**§ 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

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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.