

Bureau of Land Management, Interior

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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.

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(c) After the Secretary and the exchange proponent have agreed to terms pursuant to § 3435.3–3 of this title, the Secretary may elect to consider the exchange proposal in conjunction with the activity planning process for the coal production region in which the lands proposed to be leased are located pursuant to § 3420.3 of this title. If the Secretary elects to process the exchange proposal in this manner, the tracts identified for use in the lease exchange shall be:

(1) Delineated for analysis pursuant to § 3420.3–3 of this title;

(2) Ranked as having high desirability pursuant to § 3420.3–4(a) of this title; and

(3) Selected for inclusion for analysis purposes in alternative proposed lease sale schedules pursuant to § 3420.3–4(c) of this title. Such tracts shall then be the subject of environmental analysis, public comment and consultation pursuant to §§ 3420.3 and 3420.4 of this title.

(d) If the Secretary elects to process the exchange proposal independently of the activity planning process, the Secretary shall consider the environmental and resource information acquired during the land use planning process and found in the most recent regional environmental impact statement completed under the Federal coal management program. An environmental assessment or environmental impact statement shall be prepared on the proposed exchange prior to the public hearings and consultation required by §§ 3435.3–5 through 3435.3–7 of this title.

(e) In determining under § 3435.3–4 of this title the estimated value of the lease or preference right lease application to be relinquished, the Secretary shall proceed as though there were no prohibitions on surface mining operations on the lands covered by the lease or preference right lease application.

(f) The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange, if the exchange is completed.

[47 FR 33145, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

§ 3436.2 Fee coal exchanges.

§ 3436.2–1 Qualified exchange proponents.

(a) Fee coal exchanges under this program shall only be available to persons who:

(1) Own coal west of the 100th Meridian, west longitude, underlying or near an alluvial valley floor 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; and

(2) Are not entitled to continue any existing surface coal mining operation pursuant to the first proviso to section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Exchange proponents bear the burden of establishing their qualifications 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.

§ 3436.2–2 Federal coal deposits subject to disposal by exchange.

The coal deposits offered in exchange by the Secretary shall be determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1 of this title and shall be in the same State as the coal deposit offered in exchange by the proponent.

§ 3436.2–3 Exchange procedures.

(a) Any person meeting the requirements of § 3436.2–1(a) of this title may apply for an exchange. No special form of application is required. Any exchange proposal should be directed to the District Manager for the Bureau of Land Management district in which the Federal coal deposits are located.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified.

(c) After the authorized officer and the owner of the coal deposit underlying an alluvial valley floor identify Federal coal deposits that are suitable