

(oo) *Surface Mining Officer* means the regulatory authority as defined in 30 CFR Chapter VII.

(pp) *Valid existing rights* as used in § 3461.1 of this title is defined in 30 CFR 761.5.

(qq) *Written consent* means the document or documents that a qualified surface owner has signed that:

(1) Permit a coal operator to enter and commence surface mining of coal;

(2) Describe any financial or other consideration given or promised in return for the permission, including in-kind considerations;

(3) Describe any consideration given in terms of type or method of operation or reclamation for the area;

(4) Contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(5) Contain a full and accurate description of the area covered by the permission.

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) *Arm's length transaction* means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) *Bracket* means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of part 3480 of this title on the date of first production.

(3) *Controlled by or under common control with*, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) *Entity* means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) *Holds and has held* means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The

holds and has held requirement of section 2(a)(2)(A) of the Act is working interest holder-specific for each lease. *Working interest* includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) *Producing* means actually severing coal. A lease is also considered producing when:

(i) The operator/lessee is processing or loading severed coal, or transporting it from the point of severance to the point of sale; or

(ii) Coal severance is temporarily interrupted in accordance with §§ 3481.4-1 through 4-4 of this chapter.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33133, 33134, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985; 51 FR 43921, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987; 62 FR 44369, Aug. 20, 1997]

§ 3400.1 Multiple development.

(a) The granting of an exploration license, a license to mine or a lease for the exploration, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

(b) The presence of deposits of other minerals or the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;

§ 3400.3

- (2) The National Wildlife Refuge System;
 - (3) The National Wilderness Preservation System;
 - (4) The National System of Trails;
 - (5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;
 - (6) Incorporated cities, towns, and villages;
 - (7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and
 - (8) National Recreation Areas designated by law;
- (b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States; and
- (c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

§ 3400.3 Limitations on authority to lease.

§ 3400.3-1 Consent or conditions of surface management agency.

Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits, and subject to such conditions as that officer may prescribe to insure the use and protection of the lands for the primary purpose for which they were acquired or are being administered.

§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

- (a) Produces electrical energy for sale to the public;
- (b) Is located in the state in which the leased lands are located; and

43 CFR Ch. II (10-1-06 Edition)

- (c) Has production facilities in that state, and will use the coal produced from the lease within that state.

§ 3400.3-3 Department of Agriculture lands.

Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within the National Forest System, provided that such leases may not be issued on lands within a national forest unless the tract is assessed to be acceptable for all or certain stipulated methods of surface coal mining operations under the provisions of Criterion No. 1 in § 3461.1 of this title.

§ 3400.3-4 Trust protection lands.

The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3400.0-5(o). Regulations governing those deposits are found in 25 CFR Chapter I.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.4 Federal/state government cooperation.

(a) In order to implement the requirements of law for Federal-state cooperation in the management of Federal lands, a Department-state regional coal team shall be established for each coal production region defined pursuant to § 3400.5. The team shall consist of a Bureau of Land Management field representative for each state in the region, who will be the Bureau of Land Management State Director, or, in his absence, his designated representative; the Governor of each state included in the region or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairperson of the team. If the region is a multi-state region under the jurisdiction of only one Bureau of Land Management State Office, each State Director shall designate a Bureau of Land Management representative for each state.

- (b) Each regional coal team shall guide all phases of the coal activity