hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Knikatnu, Inc., for approximately 139.83 acres. The lands involved are within T. 17 N., R. 2 W., Seward Meridian, Alaska.

Notice of the decision will be published once a week, for four (4) consecutive weeks, in THE ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until March 18, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Supbart E (1983) (as amended, 49 FR 6371, February 21, 1984), shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-3878 Filed 2-14-85; 8:45 am]

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Draft Guidelines on Section 2(a)(2)(A) of the Mineral Leasing Act of February 25, 1920, as Amended (30 U.S.C. 201(a)(2)(A))

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Draft Guidelines and Request for Public Comment.

SUMMARY: This Notice sets forth draft guidelines reflecting the Department of the Interior's proposed administration of section 2(a)(2)(A) of the Act of February 25, 1920 (otherwise known as the Mineral Leasing Act (MLA)), as amended (30 U.S.C. 201(a)(2)(A)). When final, these guidelines will be used by Bureau of Land Management personnel in order to determine whether a Federal coal lessee, or any affiliate, is or is not in compliance with the requirements of section 2(a)(2)(A) of MLA, when the lessee, or any affiliate, seeks to qualify for a Federal lease issuance, on or after August 4, 1986. These draft guidelines address the several instances where the holder of a Federal coal lease can qualify for a Federal lease issuance by satisfying the section 2(a)(2)(A) of MLA requirements for Federal coal leases. This Notice invites public comments on the draft guidelines.

DATE: Comments must be submitted on or before April 16, 1985.

ADDRESS: Department of the Interior, Bureau of Land Management (660), 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Politzer or Mr. Allen B. Agnew, Bureau of Land Management (660), 18th and C Streets NW., Washington, D.C. 20240 (202/343-7722).

SUPPLEMENTARY INFORMATION: Section 3 of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA), added paragraph 2(a)(2)(A) to MLA. This amendment states that any entity that holds and has held a Federal coal lease for 10 years when such entity is not, except as provided for in Section 7(b) of MLA, producing coal from the lease deposits in commercial quantities, cannot be issued a Federal lease on or after August 4, 1986. This Section is widely misunderstood, especially by those approaching its complexities for the first time. By way of simplification, we highlight the following.

1. Section 2(a)(2)(A) applies (for all practical purposes) only to the holders of Federal coal leases issued prior to enactment of FCLAA (August 4, 1976). "New" Federal coal leases, those issued after FCLAA's enactment, will terminate after 10 years if they are not in production, so the precondition for a problem under Section 2(a)(2)(A)—holding a Federal coal lease for 10 years and not producing—cannot occur.

2. *Section 2(a)(2)(A) is a* "qualification" provision, affecting an entity's ability to acquire new Federal leases. It is not, strictly speaking, a "diligence" provision. Those who think of it as a "diligence" requirement regularly confuse its requirements with the "diligence" requirements of the statute: diligent development; producing at the end of 10 years; and, continued operation.

Diligence relates to the obligation to develop a specific Federal coal lease or else breach the obligation and lose the lease. That clock is tied to the date that the Federal coal lease is readjusted (20 years after issuance), or otherwise made subject to the amended statute, and is independent of the section 2(a)(2)(A) lease-holding clock that began running in 1976. If a lessee does not seek to qualify for new Federal leases (but decides rather to hold those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that lessee to do anything. That lessee's only compulsion to develop comes from the *diligence obligations of the Federal coal* leases it holds, which may not require production until after 1986—most likely whenever 10 years after Federal coal lease readjustment occurs. Production from or relinquishment of "old" Federal coal leases is required only at or prior to the time that that entity seeks to qualify for another Federal lease issuance.

3. Whatever may be the Secretary's discretion to define commercial quantities, the draft guidelines *require production* at the time that qualifications for a Federal lease issuance are being determined. The holder of a *nonproducing* Federal coal lease (held for more than 10 years) is disqualified. The policy question, on which comment is solicited, is the amount or rate of production that should constitute "producing in commercial quantities." Production is required. The production requirement assures that no Federal coal lease that "meets" section 2(a)(2)(A) is being held for speculative purposes; any lease on which production (of other than frivolous amounts of coal) is occurring has seen the investment of millions of dollars of fixed, sunk costs. Thus, the Congressional intent to force production or relinquishment, in order to qualify for new Federal leases, is fully satisfied.

With these preview comments in mind, we turn to a discussion of the contents of the guidelines themselves, and the major issues in them.

Analysis of section 2(a)(2)(A) by the Department of the Interior has resulted in the following distinct questions about the "producing in commercial quantities" obligation: What is the commercial quantities amount; over what time period must that production have occurred; what are the recoverable coal reserves for the purposes of this section of MLA; what can a lessee do to satisfy this requirement?

The draft guidelines state that section 2(a)(2)(A) of MLA can be satisified, by producing coal in commercial quantities on the date that qualifications are being determined for a new Federal lease issuance, on the three major classes of Federal coal leases:

(1) Subject to the 1982 regulatory diligence system, and producing;

(2) Not subject to the 1982 regulatory diligence system, and producing; and,

(3) included in a logical mining unit that is producing.

Public comments are specifically requested on the following policy issue: What alternative(s) should the Secretary consider before defining "producing in

commercial quantities," under Section 2(a)(2)(A), in terms of amount of production and time over which it must be produced? The draft guidelines one of several alternatives that could be implemented.

The key issue is that, if an entity wishes to qualify for a Federal lease issuance on or after August 4, 1986, all of the Federal coal lease(s) that the entity, as a titleholder or as an affiliate, holds and has held for at least 10 years must be *producing in commercial quantities*. The current regulations (43 CFR Part 3480) define commercial quantities to be 1 percent of the recoverable coal reserves. For the purposes of diligent development, the production of that 1 percent must be accomplished within the first 10 years that the lease is subject to FCLAA diligence requirements. By rule, once diligent development is achieved (i.e., production of 1 percent of the recoverable coal reserves), the lessee reserves), the lessee must maintain continued operation. For the purposes of continued operation, the production of that 1 percent must be accomplished each year, for the first 2 years that the Federal coal lease is subject to continued operation, and, therefore, on a 2-year rolling average.

The plain language of section 2(a)(2)(A) does *not* require that the production of 1 percent must have occured *prior to* a given deadline. Rather, section 2(a)(2)(A) states that the Federal coal lease must be *producing in* commercial quantities on or after August 4, 1986, in order to qualify for a new Federal lease. Section 2(a)(2)(A) states that an individual Federal coal lease must also have been held for at least 10 years by the current lessee before that lease can be subject, or any affiliate, to disqualification. However, section 2(a)(2)(A) does not provide a time frame over which *production* is measured, or by which it must be achieved. In order to constitute "commercial quantities," it only states that, after the Federal coal lease has been held for 10 years, the Federal coal lease must be *producing in commercial quantities* at the time the lease-holder, or any affiliate, wishes to be issued a Federal lease on or after August 4, 1986.

Production toward diligent development within a statutory time frame and production toward continued operation within a regulatory time frame are allowed by MLA. Failure to achieve diligent development or to maintain continued operation is punishable by loss of the lease in the first instance, and either by payment of advance royalty or loss of the lease in the second instance. The punishment for failure to be *producing in commercial quantities* for section 2(a)(2)(A) is disqualification from being issued a Federal lease on or after August 4, 1986.

The rules at 43 CFR 3472.1-2(3) cross-reference the definition of commercial quantities at 43 CFR 3480.0-5(a)(6); that is, 1 percent of the recoverable coal reserves. Neither the statute nor applicable rules specify the time frame for production of commercial quantities or the date that begins the time frame during which the production must occur. For the majority of Federal coal leases, the proposed guidelines define the time frame to be a 10-year period from the date that production begins. Production prior to August 4, 1976, cannot be credited toward the producing-in-commercial-quantities obligation of section 2(a)(2)(A).

We solicit comments on this system for defining "producing in commercial quantities." Comment are also requested on the three alternatives, to the current, partial regulatory definition of commercial quantities for section 2(a)(2)(A) purposes, that are addressed below. Additional alternatives, with appropriate justification, are also solicited.

1. Amending the 10-year time frame contained in the draft guidelines to be 1 percent by the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986, regardless when that production occurred after August 4, 1976, as long as the Federal coal lease is *producing in commercial quantities* on the qualification date. This would make section 2(a)(2)(A) work more closely like "diligent development" under Section 7 of MLA, which is currently defined in terms of "commercial quantities" and tied to the 10-year "commercial quantities" sentence of Section 7(a) of MLA.

2. Amending the 10-year time frame contained in the draft gudelines to be 1 percent in the *year* preceding the date that qualifications are being determined for a Federal lease issuance on or after August 4, 1986, as long as the Federal coal lease is *producing in commercial quantities* on the qualification date. This would make section 2(a)(2)(A) work more closely like "continued operation" under Section 7 of MLA, which is also currently defined in terms of "commercial quantities" and which is tied to both the 10-year and the 20-year "commercial quantities" provisions of section 7(a) of MLA.

3. Defining *producing in commercial quantities* to mean production under a bona fide coal sales contract or sufficient production such that operating revenues exceed operating costs, exclusive of capital investment (allowing for temprorary shutdowns not requiring suspensions of operations; e.g., inclement weather). This would take the concept innerent in oil and gas leasing and *habendum* clauses and modify it to track the differences between coal mining and oil and gas operations. The purpose of section 2(a)(2)(A) was to prevent speculative holding of nonproducing Federal coal leases. This alternative proposal would recognize that a lessee is not speculating if it has constructed a mine capable of commercial production and has initiated production from its Federal coal leases.

The draft guidelines also state under what other circumstances section 2(a)(2)(A) of MLA will not disqualify a holder of a nonproducing Federal coal lease: (1) Approved arm's-length transfer (e.g., assignment) of Federal coal lease(s), thus the assignor no longer "holds . . . and has held"; (2) approved relinquishment, thus the former lessee no longer "holds . . . and has held"; (3) approved *force majeure* suspension (strikes, the elements, or casualties not attributable to the lessee), thus not producing as provided for by section 7(b); (4) payment of advance royalty in lieu of continued operation, thus not producing as provided for by section 7(b); and, (5) under a Section 39 suspension (in the interest of conservation, as determined by the Secretary), thus the production obligation is suspended.

In connection with these subjects, we solicit public comments on the following policy issues: Should the Secretary refuse to accept relinquishment or approve assignment (or make an assignment irrevocable by disapproving re-assignments) of Federal coal leases which would otherwise become subject to the section 2(a)(2)(A) prohibition? The Department believes that refusal to accept a relinquishment may be inconsistent with the law, when read in concert with the legislative history. Regarding assignments, the Department has not established a policy, pending public comment, except the 1982 rule on the limited issue of not approving assignments of Federal coal leases on or after August 4, 1986, to entities disqualified from having Federal leases *issued* to them.

If a Federal coal lease has been held for 10 years or more, is not *producing in commercial quantities*, and is not under a suspension, the lessee, or any affiliate, *cannot* qualify for a Federal lease issuance on or after August 4, 1986. In connection with this subject, we solicit

public comments on the question: What criteria should the Secretary consider in determining what constitutes an "affiliate" under section 2(a)(2)(A) and what types of factual tests should the Secretary employ in making the determination that an entity is "controlled by or under common control with" another entity? And, must the Bureau of Land Management amend its corporate qualification and disclosure regulations to obtain additional information, or current information, on the stock ownership of bidders and lease applicants in order to implement this provision? This question is addressed generically in Appendix C of the draft guidelines, discussing the relationship between section 2(a)(2)(A) of MLA and Section 11 of FCLAA.

The draft guidelines were formulated in light of informal advice rendered by Solicitor's Office staff, and are designed to be consistent with the conclusions in the formal Solicitor's Opinion (M-36951, singed February 1985), which is available at the ADDRESS listed above.

The primary author of these draft guidelines is Mr. Allen B. Agnew, Solid Mineral Operations Division, Bureau of Land Management (BLM), assisted by other BLM field and headquarters personnel and the Office of the Solicitor, Department of the Interior.

The draft guidelines are set forth below.

Dated: February 12, 1985.

Robert F. Burford,

Director, Bureau of Land Management.

Commercial Quantities for Section 2(a)(2)(A) of the Mineral Leasing Act (Section 3 of the Federal Coal Leasing Amendments Act) Draft Guidelines

Introduction

On or after August 4, 1986, if a Federal coal lease, that has been held by the current lessee for at least 10 years, is *not in production* or *not under a suspension*, the *lessee, or any affiliate, cannot qualify* for a new onshore Federal lease issuance.

Section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended (MLA), can be satisfied by *producing coal in commercial quantities* on the date that qualifications are being determined for a new Federal lease issuance for the three major classes of Federal coal leases: (1) Subject to the 1982 regulatory diligence system, and producing; (2) not subject to the 1982 regulatory diligence system, and producing; and, (3) included in a logical mining unit which is producing. In order to take into account the differences in the first two types of Federal coal leases, the guidelines propose to treat them somewhat differently, as is developed below.

Under certain other circumstances, section 2(a)(2)(A) can also be satisfied: (1) Approved arm's-length transfer (e.g., assignment) of Federal coal lease(s), thus the assignor no longer "holds . . . and has held"; (2) approved relinquishment, thus the Federal coal lessee no longer "holds . . . and has held"; (3) approved *force majeure* suspension (strikes, the elements, or casualties not *attributable to the lessee*), thus the production obligation is suspended; (4) amended Section 7 [1] advance royalty paid *in lieu* of continued operation, thus satisfying the production obligation and, (5) Section 39 (30 U.S.C. 209) suspension (in the interest of conservation, as determined by the Secretary), thus the production obligation is suspended.

A detailed discussion of these concepts follows.

Background

Section 3 of the Federal Coal Leasing Amendments Act (FCLAA) added Section 2(a)(2)(A), among others, to MLA. Section 2(a)(2)(A) states, in part, that "[t]he *Secretary shall not issue a lease* or leases . . . *to any person*, association, corporation . . . *where any such entity holds a lease* or leases issued by the United States *to coal deposits and has held such lease* or leases *for* a period of *ten years when such entity is not*, except as provided for in section 7(b) of this Act, *producing coal from the lease* deposits *in commercial quantities*." (emphasis added) Departmental analysis of Section 2(a)(2)(A) resulted in the following distinct questions about the "producing in commercial quantities" obligation: What is the commercial quantities amount; over what time period must that production have occurred; what are the recoverable coal reserves for the purposes of this section of MLA; what can a lessee do to satisfy this requirement; what constitutes an affiliate for purposes of section 2(a)(2)(A); and, for which mineral commodities can a lessee, or any affiliate, be prohibited from obtaining a Federal lease for his failure to satisfy Section 2(a)(2)(A)?

Producing in Commercial Quantities: Section 2(a)(2)(A) vs. Section 7 of MLA

The term "commercial quantities" is used in three places in the Federal coal leasing statutes—twice in section 7(a) regarding individual lease diligence and once in section 2(a)(2)(A). In implementing FCLAA, the Department has, since 1976, defined by rule diligent development (required by section 7(b) of MLA) to conform with the producing-in-commercial-quantities-at-the-end-of-10 years obligation in section 7(a), and has related continued operation (also required by Section 7(b)) to the lease-lasts-as-long-as-coal-is-produced-annually-in-commercial-quantities obligation of section 7(a).[2] Thus, the definitions of diligent development and continued operation use the term "commercial quantities." The Bureau of Land Management (BLM) determined that the commercial quantities amount is 1 percent for *both section 2(a)(2)(A) and section 7*, as states in the preamble to the July 30, 1982, 30 CFR Part 211 (recodified at 43 CFR Part 3480) rules, which became effective on August 30, 1982. The 43 CFR Part 3480 rules then defined the time period in which the 1 percent is measured for both diligent development and continued operation purposes, but failed to define the commercial quantities time period for section 2(a)(2)(A) purposes. Lack of guidance on the time period in which the *producing in commercial quantities* requirement is measured for section 2(a)(2)(A) has caused lessees great uncertainty, especially as they examined their election possibility under the rules and *as they contemplate their ability to obtain* Federal leases on or after August 4, 1986.

See Appendix A for definitions of advance royalty, commercial quantities, continued operation, diligent development, Federal lease issuance, production, and 1982 regulatory diligence system. See Appendix B for a listing of Federal onshore mineral commodities that are prohibited from being leased to any entity, or any affiliate, that cannot satisfy the obligations of section 2(a)(2)(A) at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. See Appendix C for a generic discussion of affiliates.

Section 2(a)(2)(A) Requirements

The word "producing" implies a continuing obligation on the part of the lessee. BLM has determined that the continuing obligation means that if a Federal lease is to be issued at a given time, in order to determine whether a potential bidder is qualified under section 2(a)(2)(A), BLM will look at all of the lessee's, or any affiliate's, Federal coal leases at that time and determine if all are *producing in commercial quantities* in a certain time frame. If a Federal coal lease is *producing in commercial quantities* in a certain time frame, the lessee is satisfying section 2(a)(2)(A) and may be issued another Federal lease. Section 2(a)(2)(A) requires that the Federal coal lease must have been held by the current Federal coal lease holder for 10 years before the prohibition attaches. Section 2(a)(2)(A) also states that, in computing the 10-year period, periods of time preceding August 4, 1976, shall not be included. Therefore, BLM is implementing a 10-year bracket in determining whether the Federal coal lease is *producing in commercial quantities.*

Figure 1 gives a schematic presentation of the various paths leading to the determination of qualifications for a Federal lease issuance on or after August 4, 1986, as related to section 2(a)(2)(A). The purpose of *Figure 1 is to diagram the text of these* guidelines. There are instances when the diagram is not applicable (e.g., where a Federal coal lease is under a section 39 (30 U.S.C. 209) suspension). These exceptions are discussed later in this text.

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[1] Amended Section 7 advanced royalty vs. pre-August 4, 1976, lease-stipulated advance royalty is discussed under the section of these guidelines entitled "Payment of Advance Royalty *in lieu of* Continued Operation."

[2] With respect to a Federal coal lease that achieves diligent development in five years, for example, and then proceeds to continued operation status, the continued operation definition conforms with the Section 7(a) at-the-end-of-ten-years obligation as well.

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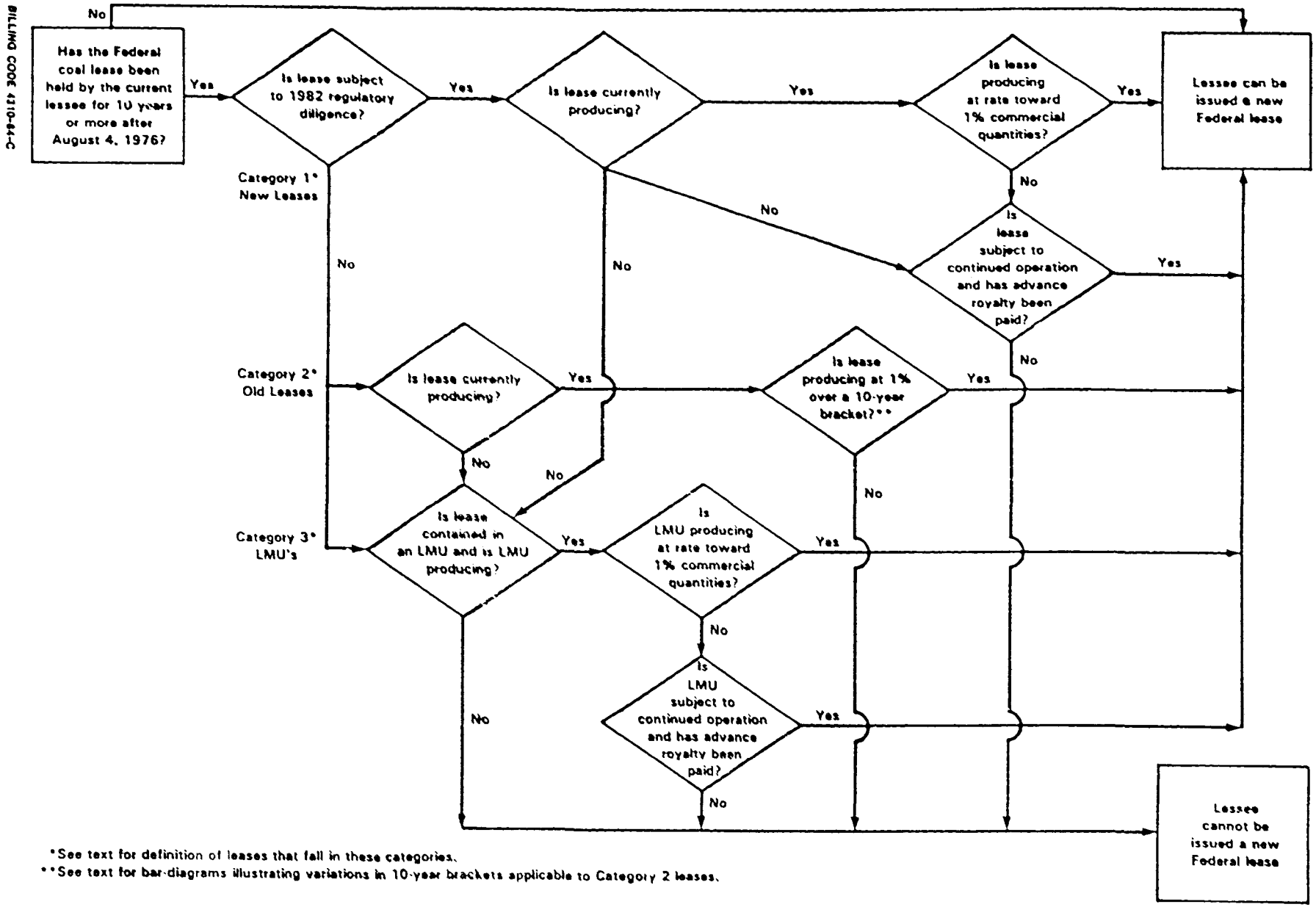


*See text for definition of leases that fall in these categories.

**See text for bar-diagrams illustrating variations in 10-year brackets applicable to Category 2 leases.

Figure 1—Schematic Diagram Of How Coal Production Satisfies Section 3 Of The Federal Coal Leasing Amendments Act Of 1976

Examples of start/end times for 10-year brackets follow the discussions of the three categories in which the question of *producing in commercial quantities*, at the time that qualifications for Federal lease issuance are being determined, must be addressed. BLM has determined that the recoverable coal reserves are those in existence at the beginning of the 10-year bracket in question, as is further explained below. This 10-year bracket means that, at the time that qualifications for a Federal lease issuance are being determined, each Federal coal lease of each Federal coal lessee, or any affiliate, wishing to qualify for a Federal lease issuance on or after August 4, 1986, must be looked at individually in the following three categories.

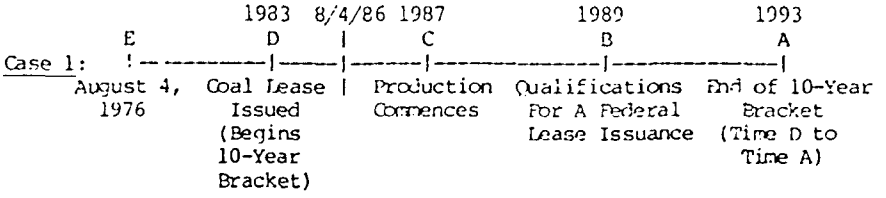
Category 1: Leses Subject to the 1982 Regulatory Diligence System

Is the lease subject to the 1982 regulatory diligence system? There are six types of circumstances under which a Federal coal lease becomes subject to the 1982 regulatory diligence system:

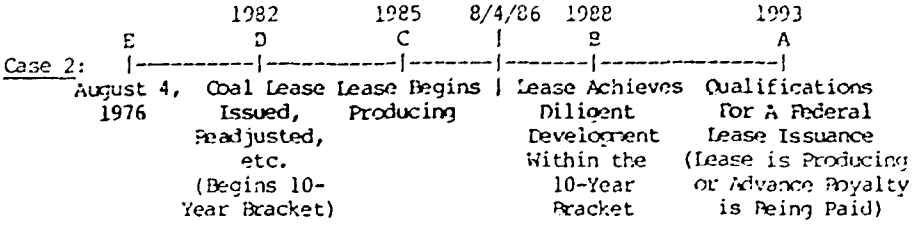
1. Federal coal lease issuance after August 4, 1976;
2. Readjustment after August 4, 1976;
3. Modification (the noncompetitive *addition* of acreage or Federal coal to a Federal coal lease, after August 4, 1976, under MLA, 30 U.S.C. 203);
4. Revision (lessee execution of revised Federal coal lease diligence provisions at the request of the Department during 1980);
5. Election to be subject to the 1982 regulatory diligence system; or,
6. Inclusion of a Federal coal lease in a logical mining unit (LMU).

If the lease is one that was issued after August 4, 1976, the lease is subject to diligent development and has 10 years within which to produce commercial quantities, or the lease may be lost. If the Federal coal lease falls within one of the other five types of circumstances, has the Federal coal lease been held by the Current lessee for 10 years or more? If the current lessee has not held the Federal coal lease for 10 years or more, the lease does not prohibit the lessee, or any affiliate, from qualifying for a Federal lease issuance on or after August 4, 1976. See also the discussion on assignments in the section entitled "EXCEPTIONS."

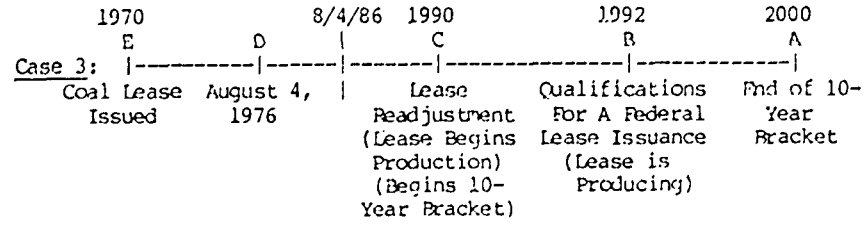
If the Federal coal lease has been held for 10 years or more by the current lessee, can BLM determine that the Federal coal lease or LMU is currently *producing in commercial quantities?* If so, the production is being credited toward the production requirements of the 1982 regulatory diligence system and, therefore, this specific Federal coal lease does not prohibit the lessee, or any affiliate, from being issued another Federal lease. See the diagrams below concerning 10-year brackets.



The Case 1 lease has 10 years from time D to produce 1 percent of the recoverable coal reserves in existence at time D. Since the lease is still in its diligent development period and only has been held 6 years, it does not have to be producing at the time B in order to allow the lessee, or any affiliate, to qualify for another Federal lease issuance.



At time B, the Case 2 lease production equals 1 percent of the recoverable coal reserves in existence at time D, thus achieving diligent development; and, the lease is thereafter subject to continued operation. Since the lease is satisfying the continued operation requirement by production or by payment of advance royalty, the lessee qualifies for another Federal lease issuance at time A. Where the Case 2 lease not maintaining continued operation by production or by payment of advance royalty *in lieu* of continued operation, the lease would be subject to cancellation.



The difference between the Case 2 and Case 3 examples is that Case 2 applies to *all* Category 1 leases that have achieved diligent development and are maintaining continued operation by production or by payment of advance royalty. Case 3 applies to all Category 1 leases *except* Federal coal leases issued after August 4, 1976. The Case 3 lease has 10 years from time C to produce 1 percent of recoverable coal reserves in existence at time C in order to achieve diligent development. The lease must be *producing in commercial quantities* at time B. If the lease were not producing at time B, the lease would have been held for at least 10 years and not be *producing in commercial quantities;* therefore, the Case 3 lease would prohibit the lessee, or any affiliate, from qualifying for another Federal lease issuance at time B. Since the lease, in this Case 3 exampel, is producing at item B, the lessee, or any affiliate, qualifies for another Federal lease issuance at time B.

Discussion: Category 1 Exceptions to 10-year Brackets

For Federal coal leases issued after August 4, 1976, if the lease has been held for 10 years and has not produced commercial quantities, the lease would be lost for failure to achieve diligent development. If such a lease is lost, that lease would not prohibit the lessee, or any affiliate, from being issued another Federal lease because the lease would no longer exist. If that lease has achieved diligent development, than it is subject to continued operation. As long as the lessee satisfies continued operation by production or by payment of advance royalty, that lease does not prohibit the lessee, or any affiliate, from being issued another Federal lease, if the lessee does *not* satisfy continued operation by production or by payment of advance royalty, that lease is subject to cancellation. If such a lease is cancelled, that lease would not prohibit the lessee, or any affiliate, from being issued another Federal lease because the lease would no longer exist.

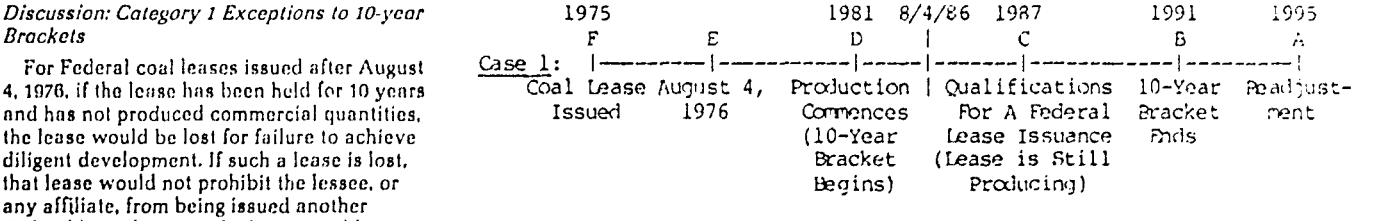
For the other five types of circumstances, the Federal coal leases are also subject to the 1982 regulatory diligence system. Once Federal coal leases are subject to the 1982 regulatory diligence system, any production after the effective date is credited toward diligent development or continued operation. *NOTE:* If there is an LMU, any production after the effective date of the LMU approval is credited toward all *Federal* coal leases contained in that LMU, regardless whether the production is from Federal or non-Federal coal. Since the production is being credited toward diligent development or continued operation, if the lease or LMU is *producing in commercial quantities* on the date of determination of qualifications for Federal lease issuance, the lease or LMU is in compliance with the section 2(a)(2)(A). Therefore, the Federal coal lease would not prohibit the lessee, or any affiliate, from being issued a Federal lease on or after August 4, 1986.

Note.—For Federal coal leases in Category 1, the recoverable coal reserves for section 2(a)(2)(A) commercial quantities are those remaining at the time the Federal coal lease becomes subject to the 1982 regulatory diligence system. Under the 1982 regulatory diligence system, the recoverable coal reserves figure can not decrease due to any production after the initial estimate is made. However, if new information is obtained (e.g., a previously undiscovered fault that makes some of the coal unrecoverable), the recoverable coal reserves may be revised pursuant to 43 CFR 3482.2(a)(3).

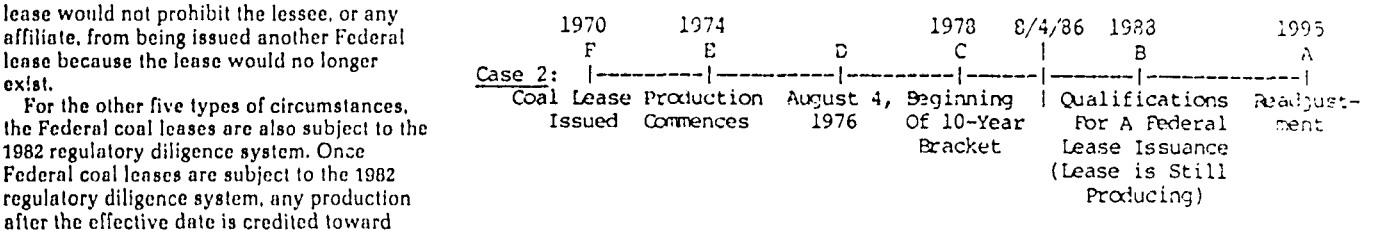
Category 2: Leases Not Subject to the 1982 Regulatory Diligence System

If the lease is not subject to the 1982 regulatory diligence system, has the Federal coal lease been held by the current lessee for 10 years or more? If the current lessee has not held the Federal coal lease for 10 years or more, the lease does not prohibit the lessee, or any affiliate, from qualifying for a Federal lease issuance on or after August 4, 1986. See also the discussion on assignments in the section entitled "EXCEPTIONS."

If the Federal coal lease has been held for 10 years or more by the current lessee, can BLM determine that the Federal coal lease is currently *producing in commercial quantities?* If BLM determines that the lease is *producing in commercial quantities,* the lease does not prohibit the lessee, or any affiliate, from being issued other Federal leases. If BLM determines that the lease is not *producing in commercial quantities,* then that lease disqualifies the lessee, or any affiliate, from being issued a Federal lease on or after August 4, 1986. See the following diagrams concerning 10-year brackets.



For Case 1, the Federal coal lease has 10 years from time D to produce 1 percent of the recoverable coal reserve in existence at time D. At time C, since the lease is *producing in commercial quantities,* of the recoverable coal reserves in existence at time D, the lessee, or any affiliate, qualifies for another Federal lease issuance at time C. If the lease is not *producing in commercial quantities* at time C, the lessee, or any affiliate, is disqualified from being issued a Federal lease at time C, *regardless* of the amount of production between time D and time C.



For Case 2, time B determines the *end* of the 10-year bracket because the Federal lease is to be issued on or after August 4, 1986 (at time B). The 10-year bracket within which the lease must be *producing in commercial quantities* can start *no earlier* than 10 years prior to the date that qualifications are being determined for the Federal lease issuance. If

the lease has had production of 1 percent of the recoverable coal reserves (in existence at time C) from time C to time B *and* if the lease is still producing at time B, the lessee, or any affiliate, qualifies for a Federal lease issuance at time B.

If the lease is *not producing in commercial quantities* at time B, the lessee, or any affiliate, is disqualified from being issued a Federal lease at time B, *regardless* of the amount of production between time C and time B. Since the guidelines maximally define *producing in commercial quantities* to be 1 percent of the recoverable coal reserves at time C, the following serves to depict the severity of the section 2(a)(2)(A) prohibition.

For example, between time C and time B, the lessee could have produced 90 percent of the recoverable coal reserves in existence at time C. However, if at time B the lease is not *producing in commercial quantities*, the lessee, or any affiliate, is disqualified from being issued another Federal lease. Section 2(a)(2)(A) is *first contingent* upon what is occurring on the date that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. Therefore, if the lease is not producing at time B, previous production history cannot be considered.

General Discussion: Category 2

At the time that qualifications for a Federal lease issuance are being determined, if the lease is a Category 2 lease, the 10-year bracket begins on the date that coal is first produced from the lease on or after August 4, 1976 (Case 1), or 10 years prior to the time that qualifications are being determined (Case 2), whichever is most recent. It is important to note that Case 2, 10-year brackets depend on the date that qualifications for a Federal lease issuance are being determined. For example, if there were to be another Federal lease issuance in 1992, the 10-year bracket would have to begin no earlier than 1982.

Under the 1982 43 CFR Part 3480 rules, for Category 2 leases, the recoverable coal reserves *decrease* with production *until* the lease becomes a Category 1 lease. Because of this, the commercial quantities amount also decreases with production until the lease becomes a Category 1 lease. Therefore, for Federal coal leases issued prior to August 4, 1976, that are not in Category 1, the recoverable coal reserves are those estimated by the Authorized Officer (43 CFR 3400.0-5(b)) to have existed on the *date that Federal coal was first produced* from the lease on or after August 4, 1976 (Case 1), *or 10 years prior to the date that qualifications* for a Federal lease issuance *are being determined* (Case 2), whichever is most recent. This is because section 2(a)(2)(A) states that the lease must have been held for 10 years. Therefore, for section 2(a)(2)(A) purposes, the *producing-in-commercial-quantities* requirement must be based on the recoverable coal reserves remaining on the date that is no earlier than 10 years prior to the date that qualifications for a Federal lease issuance are being determined. For Case 2, if there were to be another Federal lease issuance in 1992, the *quantities* requirement would be based on the recoverable coal reserves remaining in 1982, not those in existence in 1978.

Note.—Mobil lease w23929 is considered to be a Category 2 lease until its readjustment in 1991. This is because the lease is subject to its terms, as well as the *Mobil v. Andrus* litigation-settlement stipulation, and will not be subject to the 1982 regulatory diligence system until its readjustment in 1991.

Discussion: Category 2 Leases Resulting From Exchanges Authorized or Mandated by Congress

There have been several congressionally authorized or mandated Federal coal lease exchanges: Pub. L. 95-67, August 3, 1977 (Surface Mining Control and Reclamation Act alluvial valley floor exchanges); Pub. L. 95-554, October 30, 1978 (I-90 exchanges); Pub. L. 96-401, October 9, 1980 (Northern Cheyenne exchanges); Pub. L. 96-475, October 19, 1980 (Bisti exchange); and, Pub. L. 96-476, October 19, 1980 (Rattlesnake exchange). In the I-90 and Bisti cases, Congress directed that the exchange leases contain the "same terms" as the lease of which all or a portion thereof was relinquished. For example, under Pub. L. 95-554 (I-90), Exxon Coal USA, Inc. relinquish part of Federal coal lease w5035 in exchange for Federal coal leases w83394 and w83395. Although w83394 and w83395 were issued on January 28, 1983, both leases have the "same terms," and thus the same effective date, as w5035 (i.e., December 1, 1967).

Although, on paper, the leases appear to have been in effect since 1967, Exxon Coal USA, Inc. only "has held" w83394 and w83395 since 1983. Therefore, the section 2(a)(2)(A) 10-year prohibition on these two leases will not be a factor in determining qualifications for Federal lease issuance until January 28, 1983. Of these three leases, only lease w5035 will carry such a possible prohibition, effective August 4, 1986.

Note.—The readjustment of all three leases in 1987 will not affect the section 2(a)(2)(A) 10-year bracket, as the readjustment 10-year clocks (section 7 of MLA) are wholly independent from the section 2(a)(A) 10-year bracket (i.e., the section 2(a)(A), 10-year holding period before qualifications must be determined). This type of exchange lease falls within Category 2 until the effective date of the first post-August 4, 1976, lease readjustment or modification, which adds Federal recoverable coal reserves or acreage, whichever occurs first.

This issue arises only with Federal (non-Indian) coal leases resulting from congressionally authorized or mandated exchanges, and whose terms are those of the lease of which all or a portion thereof was relinquished (i.e., the terms regarding the original lease issuance and next readjustment anniversary date).

Federal coal leases resulting from the other listed exchange authorities, such as those mandated by Pub. Law No. 96-401 (Northern Cheyenne), are issued with no retroactive effective date (e.g., lease w80954, North Duck Nest Creek, which was effective October 1, 1982), and this question does not arise. For this type of exchange lease, both the section 2(a)(2)(A) 10-year bracket and the section 7, dilingent-development, 10-year clock run simultaneously. This type of exchange lease falls within Category 1, as the lease is effective after August 4, 1976.

Category 3: Nonproducing Federal Coal Leases Contained in a Producing Logical Mining Unit

If a Federal coal lesse is not in production at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, and that lease is contained in an LMU, has the lease been held for 10 years or more by the current lessee? If the current lessee has not held the Federal coal lease for 10 years or more, the lease does not prohibit the lessee, or any affiliate, from qualifying for another Federal lease issuance. If the Federal coal lease has been held for 10 years or more by the current lessee, is the LMU *producing in commercial quantities?* Section 2(d) of MLA states that production from anywhere within an LMU may be credited toward the production obligations for all Federal coal leases in the LMU. If the LMU is producing in commercial quantities, the production is being credited toward the commercial quantities requirement of the 1982 regulatory diligence system for the LMU. Such LMU production is also credited for purposes of meeting the commercial quantities requirement of section 2(a)(2)(A) for all Federal coal leases within the LMU. Therefore, any nonproducing Federal coal lease contained in a *producing* LMU doe not prohibit the lessee, or any affiliate, from qualifying for another Federal lease issuance.

General Discussion: Category 3

See the Category 1 Discussion regarding Federal coal production within an LMU.

Exceptions

In certain instances, a lessee, or any affiliate, can qualify for another Federal lease issuance because the Federal coal lease is relieved of a production requirement or because the lessee no longer holds the lease. The following discussion addresses five such instances.

Force Majeure Suspensions

A Federal coal lease (Category 1) or the Federal coal leases in an LMU (Categories 1 and 3) can be relieved of the section 2(a)(2)(A) prohibition under the staturory "except as provided in section 7(b) of this Act" clause. After a lease or LMU is subject to either diligent development or continued operation, section 2(a)(2)(A) may be satisfied by a *force majeure* suspension (strikes, the elements, or casualties not attributable to the lessee), if approved by the Secretary. If, at the time of a Federal lease issuance on or after August 4, 1986, a Federal coal lease or LMU is under a *force majeure* suspension, it is relieved of the requirement to produce commercial quantities. Since there is no production obligation, the lease or LMU does not prohibit the lessee, or any affiliate, from qualifying for a Federal lease issuance on or after August 4, 1986.

Category 2 leases, however, are not subject to section 7(b) of MLA; therefore, section 2(a)(2)(A)'s exception does not apply to them. Thus, even if a *force majeure* suspension can be granted by the Secretary under the lease's specific, *force majeure* lease term, it will not relieve the lessee, or any affiliate, of the section 2(a)(2)(A) obligation. Although there

is no production obligation, *the lease does prohibit the lessee*, or any affiliate, *from qualifying* for a Federal lease issuance on or after August 4, 1986.

Payment of Advance Royalty in Lieu of Continued Operation

As discussed in Category 1, once a lease, which is subject to 1982 regulatory diligence system, or LMU is subject to the condition of continued operation, the production obligation may be relieved by the payment of advance royalty *in lieu* of production to maintain continued operation. As long as the lessee is paying advance royalty, the lease does not have to be producing and, therefore, the lease does not prohibit the lessee, or any affiliate, from being issued a Federal lease on or after August 4, 1986.

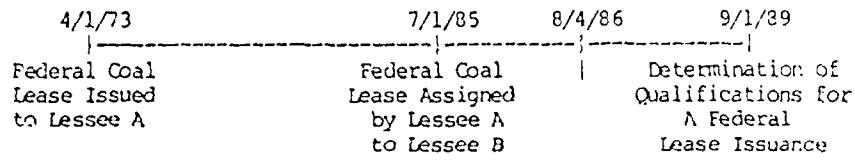
Note.—The payment of advance royalty *in lieu* of continued operation only applies to leases that are subject to the 1982 regulatory diligence system or to LMU's. Payment made under the minimum production clause, *in lieu* of actual production from a Federal coal lease, issued prior to August 4, 1976, and not yet subject to the 1982 regulatory diligence system after August 4, 1976, are not advance royalty for the purposes of suspending the *producing-in-commercial-quantities* requirement of section 2(a)(2)(A).

Section 39 (30 U.S.C. 209) Suspensions

If any Federal Coal laase or LMU (Category 1, 2, or 3) is under a section 39 (30 U.S.C. 209) suspension (in the interest of conservation), as aproved by the Secretary, the lessee has no beneficial use of the lease or LMU by statue, except to maintain mine openings and equipment, and to satisfy the reclamation obligations pursuant to the Surface Mining Control and Reclamation Act of 1977. Since such a lease or LMU has no production obligation and no *right* to produce, because the section 39 suspension has temporarily stopped the section 2(a)(2)(A) 10-year bracket, as well as the Section 7 diligent development 10-year clock or the Section 7 requirement to maintain continued operation, the lease or LMU does not prohibit the lessee, or any affiliate, from being issued other Federal leases. It should be noted that when the Section 39 suspension terminates, the section 2(a)(2)(A) 10-year bracket and, if applicable, the time remaining to satisfy the production obligation for diligent development or continued operation, resumes from the point at which it was stopped.

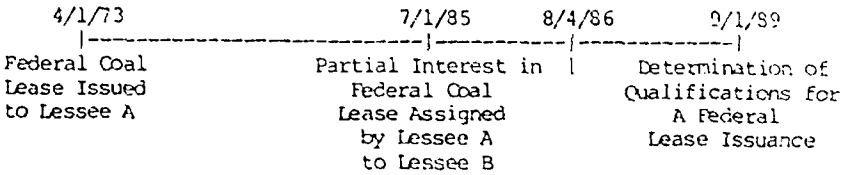
Federal Coal Lease Assignments

If a lessee transfers the holdidng of a Federal coal lease via an arm's-lenght assignment, approved by the Authorized Officer after his determination that the assignment is for 100 percent of the lease or 100 percent of a portion of the lease, the effective date of the approval of the assignment begins a new 10-year bracket for the purposes of satisfying section 2(a)(2)(A). That is, the 10-year bracket is *lease-holder*-specific for each Federal coal lease. [*Note:* The diligent development and continued operation requirement are *lease*-specific or, if applicable, *LMU*-specific; they are *not* lease-holder specific.] See the diagram and discussion below.



The Federal coal lease was issued to lessee A on April 1, 1973, and there has been no production from that lease. This is the only Federal coal lease that lessee A holds. On July 1, 1985, lessee A assigns 100 percent interest in that lease to lessee B and this lease is the only Federal coal lease that lessee B holds. Lessee B then wants to qualify for a Federal lease issuance on or after August 4, 1986. Assume that the date, that qualifications for Federal lease issuance are being determined, is September 1, 1989. Since lessee B has only held this nonproducing lease for 4 years and 2 months after August 4, 1976, lessee B does not have any problem with the section 2(a)(2)(A) prohibition of holding such a lease for 10 years at the time that qualifications for the September 1, 1989, Federal lease issuance are being determined. Since the Federal coal lease was the only Federal coal lease that lessee A had held, lessee A also does not have any problem with the section 2(a)(2)(A) prohibition of holding such a lease for 10 years because lessee A no longer holds any portion of, or any interest in, the lease.

If a partial assignment is made, the assignee *may* not have a problem of being prohibited from being issued a Federal lease on or after August 4, 1986. That is, the assignor's and the assignee's status must be determined independently (see the discussion following the diagram below).



The Federal coal lease was issued to lessee A on April 1, 1973, and there has been no production form that lease. On July 1, 1985, lessee A assigns a partial interest in that lease (less than 100 percent) to lessee B and retains the remaining interest in the lease. This lease is the only Federal coal lease that lessee B holds. On September 1, 1989, qualifications for a Federal lease issuance are being determined. *Lessee A*, having held the lease (or portion of, or interest in, the lease) for 13 years after August 4, 1976, *cannot qualify because the lease is not producing in commercial quantities*. However, lessee B can qualify for the Federal lease issuance because lessee B has only held his portion of the Federal coal lease for 4 years after August 4, 1976.

If an assignment of an undivided interest results in the creation of a new Federal coal lease, the same logic applies. That is, the section 2(a)(2)(A) 10-year holding period is lease-holder specific.

Note.—By regulation (43 CFR 3453.3-1(a)(8)), a Federal coal lessee, or any affiliate, cannot be assigned any or all of a Federal coal lease on or after August 4, 1986, if that lessee, or any affiliate, "holds . . . and has held" a nonproducing Federal coal lease for 10 years or more after August 4, 1976. However, such a lessee, or any affiliate, is not prohibited by statute or regulation from obtaining approval for a modification to add acreage and/or recoverable coal reserves to Federal coal leases that disqualify that lessee, or any affilliate, from a Federal lease issuance on or after August 4, 1986, because such a prohibition could result in bypass situations in many instances.

Federal Coal Lease Relinquishments

If a lessee with only one Federal coal lease has held that lease for 10 years or more after August 4, 1976, the lease is relinquished in accordance with 43 CFR 3452.1, and the relinquishment is effective *prior to* the time that qualifications for a Federal lease issuance are being determined, that lessee, or any affiliate, does not have any problem with the section 2(a)(2)(A) prohibition of holding such a lease for 10 years. This is due to the dual requirement of section 2(a)(2)(A) which states, in part, "holds . . . *and* has held." (emphasis added) Since the lessee no longer holds the lease, the "has held" provision of section 2(a)(2)(A) is not a factor at the time that qualification for a Federal lease issuance on or after August 4, 1986, are being determined.

General Statement on Processing Federal Coal Lease Assignment, Relinquishment, and LMU Applications

Rules will be developed to protect the priority of noncompetitive oil and gas lease-applicants and prevent adverse action on other mineral-lease, assignment, relinquishment, and LMU applications where BLM is unable to act upon nonproducing Federal coal lease assignments, relinquishments, or LMU's within a specific period of time that will be established in the rules. This will include mineral-lease, assignment, relinquishment, and LMU applications pending on August 4, 1986.

Summary

In determining whether a Federal coal lessee, or any affiliate, can qualify for a Federal lease issuance on or after August 4, 1986, each of the Federal coal leases or LMU's that that lessee, or any affiliate, holds must be assessed individually for compliance with section 2(a)(2)(A) of LMA. Individually, the leases or LMU's must satisfy the *producing-in-commercial-quantities* requirement, with the exceptions discussed above.

Any *previous* or any *subsequent* failure to comply with section 2(a)(2)(A) does *not* negate a Federal coal lessee, or any affiliate, from qualifying for another Federal lease issuance, *Provided That*, at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, the Federal coal lessee, or any affiliate, is in full compliance with section 2(a)(2)(A). Any Federal coal lessee, or any affiliate, must satisfy section 2(a)(2)(A) *at the time* that qualifications are being determined. There is no provision in section 2(a)(2)(A) that mandates retroactive or future punishment because that Federal coal lessee, or any affiliate, failed to satisfy section 2(a)(2)(A) at another time.

ON OR AFTER AUGUST 4, 1986, IF A FEDERAL COAL LEASE, THAT HAS BEEN HELD BY THE CURRENT LESSEE FOR AT LEAST 10 YEARS, IS *NOT IN PRODUCTION* OR *NOT UNDER A SUSPENSION*, THE *LESSEE, OR ANY AFFILIATE, CANNOT QUALIFY* FOR A NEW ONSHORE FEDERAL LEASE ISSUANCE.

Appendix A—Definitions

Advance Royalty: A payment under a Federal lease, when authorized by BLM, to be made *in lieu* of actual production to meet the continued operation obligation. Payments made under the minimum production clause, *in lieu* of actual production from a Federal coal lease issued prior to August 4, 1976, and not yet subject to the 1982 regulatory diligence system, are not advance royalty for the purposes of suspending the *producing-in-commercial-quantities* requirement of section 2(a)(2)(A).

Commercial Quantities: One percent of the recoverable coal reserves or LMU recoverable coal reserves.

Continued Operation: Production of not less than commercial quantities of the recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

Continued Operation Year: The 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter, except as suspended in accordance with the 1982 regulatory diligence system.

Diligent Development: Production of recoverable coal reserves in commercial quantities prior to the end of 10 years from the date that the Federal coal lease or LMU is first subject to the 1982 regulatory diligence system.

Federal Lease Issuance: Receipt at issuance of a whole or partial interest in any onshore Federal lease issued pursuant to MLA, as amended, and, by regulation, receipt of a whole or partial interest in a Federal coal lease by assignment. The term "Federal Lease Issuance" does *not* include modifications to existing Federal coal leases.

Production: Mining of recoverable coal reserves and/or commercial byproducts from a mine using surface, underground, auger, or *in situ* methods. *NOTE:* Mining includes processing or transporting mined Federal coal to a purchaser, or transporting Federal or non-Federal coal to a purchaser if the Federal coal lease is contained in an approved LMU.

1982 Regulatory Diligence System: The 43 CFR Part 3480 rules, effective on August 30, 1982, which implement the section 7 diligence provisions of MLA, as amended by FCLAA on August 4, 1976.

Appendix B

Federal Onshore Mineral Commodities, Leasable Pursuant to MLA, That Are Prohibited For Being Issued to any Entity That Cannot Satisfy the Obligations of Section 2(a) (2) (A) of MLA (Section 3 of FCLAA) at the Time That Qualifications Are Being Determined for a Federal Lease Issuance on or After August 4, 1986

Coal
Gilsonite, including ALL VEIN-TYPE, SOLID HYDROCARBONS
Oil & Gas, including Tar Sands
Oil Shale
Phosphate
Potash
Sodium
Sulphur

Appendix C—Discussion of Affiliates

Under section 2(a) (2) (A), the Secretary, subject to certain exceptions, may not issue a Federal lease "to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity . . ." has held a Federal coal lease for a period of 10 years and the entity is not producing coal from that lease.

The legislative history and administrative interpretation of section 11 of FCLAA are particularly relevant in interpreting section 2(a) (2) (A) of MLA, as the language used in both Sections is identical. The legislative history of Section 11 states, in part, that "(t)he purpose . . . of this language is to assure that the restrictions . . . are not circumvented by the formation of holding companies, or other devices of corporate organization." It is apparent from the plain language of section 2(a) (2) (A) and the legislative history of Section 11 that "control" is the key concept through which ownership of a Federal coal lease will be attributed to related corporate entities. The phrase "controlled by or under *common control with* such person, association, or corporation" modifies the words "subsidiary," "affiliate," and "persons." Therefore, when a chain of corporate ownership is involved, the question is whether a given corporation is "controlled by or under common control with" a related corporation. If there is sufficient control of a corporation by another corporation to justify piercing the "corporate veil" under established legal principles, related corporations in the corporate chain will be charged with ownership of the Federal coal lease to the same extent that the Federal coal lease-holding corporation is charged. This analysis is consistent with the Department's established interpretation of Section 11. See 46 FR 61390, 61403 (1981).

The question of whether a particular entity is "controlled by or under common control with" another entity for section 2(a) (2) (A) purposes will have to be determined on a case-by-case basis at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. The 10-percent, stock-ownership rule involved with the maximum acreage limitation in section 27(e) of MLA (30 U.S.C. 184(e)), *as modified by section 11 of FCLAA* (30 U.S.C. 184(a) (1)), for Federal coal lease holdings does not apply to section 2(a) (2) (A); However, it *may* be possible to adopt a similar rule as a matter of administrative discretion in order to implement section 2(a) (2) (A).

[FR Doc. 85-3857 Filed 2-14-85; 8:45 am]
BILLING CODE 4310-84-M

Federal-State Coal Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board will be meeting in Denver, Colorado, on March 21, 1985. The public is welcome to attend. The Board will (1) hear presentations on the status of the coal program, (2) review proposed changes to the program, and (3) discuss regional coal team charters, functions, and considerations for program restart.

DATE: The Board will meet at 9:00 a.m. on March 21, 1985.

ADDRESS: The meeting will be held at the Clarion Hotel, 3203 Quebec Street,