

Bureau of Land Management, Interior

Pt. 3920

may approve modification of the exploration license proposed by the licensee in writing if geologic or other conditions warrant. The BLM will not add lands to the license once it has been issued.

(e) Subject to the continued obligation of the licensee and the surety to comply with the terms and conditions of the exploration license, the exploration plan, and these regulations, a licensee may relinquish an exploration license for any or all of the lands covered by it. A relinquishment must be filed in the BLM state office in which the original application was filed.

(f) The BLM may terminate an exploration license for noncompliance with its terms and conditions and part 3900, this part, and parts 3920 and 3930 of this chapter.

§ 3910.42 Limitations on exploration licenses.

(a) The issuance of an exploration license for an area will not preclude the BLM's approval of an exploration license or issuance of a Federal oil shale lease for the same lands.

(b) If an oil shale lease is issued for an area covered by an exploration license, the BLM will terminate the exploration license on the effective date of the lease for those lands that are common to both.

§ 3910.44 Collection and submission of data.

Upon the BLM's request, the licensee must provide copies of all data obtained under the exploration license in the format requested by the BLM. To the extent authorized by the Freedom of Information Act, the BLM will consider the data confidential and proprietary until the BLM determines that public access to the data will not damage the competitive position of the licensee or the lands involved have been leased, whichever comes first. The licensee must submit to the proper BLM office all data obtained under the exploration license.

§ 3910.50 Surface use.

Operations conducted under an exploration license must:

(a) Not unreasonably interfere with or endanger any other lawful activity on the same lands;

(b) Not damage any improvements on the lands; and

(c) Comply with all applicable Federal, state, and local laws and regulations.

PART 3920—OIL SHALE LEASING

Subpart 3921—Pre-Sale Activities

Sec.

3921.10 Special requirements related to land use planning.

3921.20 Compliance with the National Environmental Policy Act.

3921.30 Call for expression of leasing interest.

3921.40 Comments from governors, local governments, and interested Indian tribes.

3921.50 Determining the geographic area for receiving applications to lease.

3921.60 Call for applications.

Subpart 3922—Application Processing

3922.10 Application processing fee.

3922.20 Application contents.

3922.30 Application—Additional information.

3922.40 Tract delineation.

Subpart 3923—Minimum Bid

3923.10 Minimum bid.

Subpart 3924—Lease Sale Procedures

3924.5 Notice of sale.

3924.10 Lease sale procedures and receipt of bids.

Subpart 3925—Award of Lease

3925.10 Award of lease.

Subpart 3926—Conversion of Preference Right for Research, Development, and Demonstration (R, D and D) Leases

3926.10 Conversion of an R, D and D lease to a commercial lease.

Subpart 3927—Lease Terms

3927.10 Lease form.

3927.20 Lease size.

3927.30 Lease duration and notification requirement.

3927.40 Effective date of leases.

3927.50 Diligent development.

AUTHORITY: 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b) and 1740.

§ 3921.10

SOURCE: 73 FR 69477, Nov. 18, 2008, unless otherwise noted.

Subpart 3921—Pre-Sale Activities

§ 3921.10 Special requirements related to land use planning.

The State Director may call for expressions of leasing interest as described in § 3921.30 after areas available for leasing have been identified in a land use plan completed under part 1600 of this chapter.

§ 3921.20 Compliance with the National Environmental Policy Act.

Before the BLM will offer a tract for competitive lease sale under subpart 3924, the BLM must prepare a NEPA analysis of the proposed lease area under 40 CFR parts 1500 through 1508 either separately or in conjunction with a land use planning action.

§ 3921.30 Call for expression of leasing interest.

The State Director may implement the provisions of §§ 3921.40 through 3921.60 after review of any responses received as a result of a call for expression of leasing interest. The BLM notice calling for expressions of leasing interest will:

- (a) Be published in the FEDERAL REGISTER and in at least 1 newspaper of general circulation in each affected state for 2 consecutive weeks;
- (b) Allow no less than 30 calendar days to submit expressions of interest;
- (c) Request specific information including the name and address of the respondent and the legal land description of the area of interest;
- (d) State that all information submitted under this subpart must be available for public inspection; and
- (e) Include a statement indicating that data which is considered proprietary must not be submitted as part of an expression of leasing interest.

§ 3921.40 Comments from governors, local governments, and interested Indian tribes.

After the BLM receives responses to the call for expression of leasing interest, the BLM will notify the appropriate state governor's office, local governments, and interested Indian

43 CFR Ch. II (10–1–24 Edition)

tribes and allow them an opportunity to provide comments regarding the responses and other issues related to oil shale leasing. The BLM will only consider those comments it receives within 60 calendar days after the notification requesting comments.

§ 3921.50 Determining the geographic area for receiving applications to lease.

After analyzing expressions of leasing interest received under § 3921.30 and complying with the procedures at § 3921.40 of this chapter, the State Director may determine a geographic area for receiving applications to lease. The BLM may also include additional geographic areas available for lease in addition to lands identified in expressions of interest to lease.

§ 3921.60 Call for applications.

If, as a result of the analysis of the expression of leasing interest, the State Director determines that there is interest in having a competitive sale, the State Director may publish a notice in the FEDERAL REGISTER requesting applications to lease. The notice will:

- (a) Describe the geographic area the BLM determined is available for application under § 3921.50;
- (b) Allow no less than 90 calendar days for interested parties to submit applications to the proper BLM office; and
- (c) Provide that applications submitted to the BLM must meet the requirements at subpart 3922.

Subpart 3922—Application Processing

§ 3922.10 Application processing fee.

(a) An applicant nominating or applying for a tract for competitive leasing must pay a cost recovery or processing fee that the BLM will determine on a case-by-case basis as described in § 3000.11 of this chapter and as modified by the following provisions.

(b) The cost recovery process for a competitive oil shale lease is as follows:

- (1) The applicant nominating the tract for competitive leasing must pay the fee before the BLM will process the

application and publish a notice of competitive lease sale;

(2) The BLM will publish a sale notice no later than 30 days before the proposed sale. The BLM will include in the sale notice a statement of the total cost recovery fee paid to the BLM by the applicant, up to 30 calendar days before the sale;

(3) Before the lease is issued:

(i) The successful bidder, if someone other than the applicant, must pay to the BLM the cost recovery amount specified in the sale notice, including the cost of the NEPA analysis; and

(ii) The successful bidder must pay all processing costs the BLM incurs after the date of the sale notice;

(4) If the successful bidder is someone other than the applicant, the BLM will refund to the applicant the amount paid under paragraph (b)(1) of this section;

(5) If there is no successful bidder, the applicant is responsible for all processing fees; and

(6) If the successful bidder is someone other than the applicant, within 30 calendar days after the lease sale, the successful bidder must file an application in accordance with § 3922.20.

§ 3922.20 Application contents.

A lease application must be filed by any party seeking to obtain a lease. Lease applications must be filed in the proper BLM State Office. No specific form of application is required, but the application must include information necessary to evaluate the impacts on the human environment of issuing the proposed lease or leases. Except as otherwise requested by the BLM, the application must include, but not be limited to, the following:

(a) Name, address, and telephone number of applicant, and a qualification statement, as required by subpart 3902 of this chapter;

(b) A delineation of the proposed lease area or areas, the surface ownership (if other than the United States) of those areas, a description of the quality, thickness, and depth of the oil shale and of any other resources the applicant proposes to extract, and environmental data necessary to assess impacts from the proposed development; and

(c) A description of the proposed extraction method, including personnel requirements, production levels, and transportation methods, including:

(1) A description of the mining, re-torting, or in situ mining or processing technology that the operator would use and whether the proposed development technology is substantially identical to a technology or method currently in use to produce marketable commodities from oil shale deposits;

(2) An estimate of the maximum surface area of the lease area that will be disturbed or be undergoing reclamation at any one time;

(3) A description of the source and quantities of water to be used and of the water treatment and disposal methods necessary to meet applicable water quality standards;

(4) A description of the regulated air emissions;

(5) A description of the anticipated noise levels from the proposed development;

(6) A description of how the proposed lease development would comply with all applicable statutes and regulations governing management of chemicals and disposal of solid waste. If the proposed lease development would include disposal of wastes on the lease site, include a description of measures to be used to prevent the contamination of soil and of surface and ground water;

(7) A description of how the proposed lease development would avoid, or, to the extent practicable, mitigate impacts on species or habitats protected by applicable state or Federal law or regulations, and impacts on wildlife habitat management;

(8) A description of reasonably foreseeable social, economic, and infrastructure impacts on the surrounding communities, and on state and local governments from the proposed development;

(9) A description of the known historical, cultural, or archaeological resources within the lease area;

(10) A description of infrastructure that would likely be required for the proposed development and alternative locations of those facilities, if applicable;

(11) A discussion of proposed measures or plans to mitigate any adverse

§ 3922.30

socioeconomic or environmental impacts to local communities, services and infrastructure;

(12) A brief description of the reclamation methods that will be used;

(13) Any other information that shows that the application meets the requirements of this subpart or that the applicant believes would assist the BLM in analyzing the impacts of the proposed development; and

(14) A map, or maps, showing:

(i) The topography, physical features, and natural drainage patterns;

(ii) Existing roads, vehicular trails, and utility systems;

(iii) The location of any proposed exploration operations, including seismic lines and drill holes;

(iv) To the extent known, the location of any proposed mining operations and facilities, trenches, access roads, or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and

(v) The location of water sources or other resources that may be used in the proposed operations and facilities.

§ 3922.30 Application—Additional information.

At any time during processing of the application, or the environmental or similar assessments of the application, the BLM may request additional information from the applicant. Failure to provide the best available and most accurate information may result in suspension or termination of processing of the application, or in a decision to deny the application.

§ 3922.40 Tract delineation.

(a) The BLM will delineate tracts for competitive sale to provide for the orderly development of the oil shale resource.

(b) The BLM may delineate more or less lands than were covered by an application for any reason the BLM determines to be in the public interest.

(c) The BLM may delineate tracts in any area acceptable for further consideration for leasing, whether or not expressions of leasing interest or applications have been received for those areas.

43 CFR Ch. II (10–1–24 Edition)

(d) Where the BLM receives more than 1 application covering the same lands, the BLM may delineate the lands that overlap as a separate tract.

Subpart 3923—Minimum Bid

§ 3923.10 Minimum bid.

The BLM will not accept any bid that is less than the FMV as determined under § 3924.10(d). In no case may the minimum bid be less than \$1,000 per acre.

Subpart 3924—Lease Sale Procedures

§ 3924.5 Notice of sale.

(a) After the BLM complies with subparts 3921 and 3922, the BLM may publish a notice of the lease sale in the FEDERAL REGISTER containing all information required by paragraph (b) of this section. The BLM will also publish a similar notice of lease sale that complies with this section once a week for 3 consecutive weeks, or such other time deemed appropriate by the BLM, in 1 or more newspapers of general circulation in the county or counties in which the oil shale lands are situated. The notice of the sale will be posted in the appropriate State Office at least 30 days prior to the lease sale.

(b) The notice of sale will:

(1) List the time and place of sale, the bidding method, and the legal land descriptions of the tracts being offered;

(2) Specify where a detailed statement of lease terms, conditions, and stipulations may be obtained;

(3) Specify the royalty rate and the amount of the annual rental;

(4) Specify that, prior to lease issuance, the successful bidder for a particular lease must pay the identified cost recovery amount, including the bidder's proportionate share of the total cost of the NEPA analysis and of publication of the notice; and

(5) Contain such other information as the BLM deems appropriate.

(c) The detailed statement of lease terms, conditions, and stipulations will, at a minimum, contain:

(1) A complete copy of each lease and all lease stipulations to the lease; and

Bureau of Land Management, Interior

§ 3926.10

(2) Resource information relevant to the tracts being offered for lease and the minimum production requirement.

§ 3924.10 Lease sale procedures and receipt of bids.

(a) The BLM will accept sealed bids only as specified in the notice of sale and will return to the bidder any sealed bid submitted after the time and date specified in the sale notice. Each sealed bid must include:

(1) A certified check, cashier's check, bank draft, money order, personal check, or cash for one-fifth of the amount of the bonus; and

(2) A qualifications statement signed by the bidder as described in subpart 3902 of this chapter.

(b) At the time specified in the sale notice, the BLM will open and read all bids and announce the highest bid. The BLM will make a record of all bids.

(c) No decision to accept or reject the high bid will be made at the time of sale.

(d) After the sale, the BLM will convene a sales panel to determine:

(1) If the high bid was submitted in compliance with the terms of the notice of sale and these regulations;

(2) If the high bid reflects the FMV of the tract; and

(3) Whether the high bidder is qualified to hold the lease.

(e) The BLM may reject any or all bids regardless of the amount offered, and will not accept any bid that is less than the FMV. The BLM will notify the high bidder whose bid has been rejected in writing and include a statement of reasons for the rejection.

(f) The BLM may offer the lease to the next highest qualified bidder if the successful bidder fails to execute the lease or for any reason is disqualified from receiving the lease.

(g) The balance of the bonus bid is due and payable to the MMS in 4 equal annual installments on each of the first 4 anniversary dates of the lease, unless otherwise specified in the lease.

Subpart 3925—Award of Lease

§ 3925.10 Award of lease.

(a) The lease will be awarded to the highest qualified bidder whose bid meets or exceeds the BLM's estimate of

FMV, except as provided in § 3924.10. The BLM will provide the successful bidder 3 copies of the oil shale lease form for execution.

(b) Within 60 calendar days after receipt of the lease forms, the successful bidder must sign all copies and return them to the proper BLM office. The successful bidder must also submit the necessary lease bond (see subpart 3904 of this chapter), the first year's rental, any unpaid cost recovery fees, including costs associated with the NEPA analysis, and the bidder's proportionate share of the cost of publication of the sale notice. The BLM may, upon written request, grant an extension of time to submit the items under this paragraph.

(c) If the successful bidder does not comply with this section, the BLM will not issue the lease and the bidder forfeits the one-fifth bonus payment submitted with the bid.

(d) If the lease cannot be awarded for reasons determined by the BLM to be beyond the control of the successful bidder, the BLM will refund the deposit submitted with the bid.

(e) If the successful bidder was not an applicant under § 3922.20, the successful bidder must submit an application and the BLM may require additional NEPA analysis of the successful bidder's proposed operations.

Subpart 3926—Conversion of Preference Right for Research, Development, and Demonstration (R, D and D) Leases

§ 3926.10 Conversion of an R, D and D lease to a commercial lease.

(a) Applications to convert R, D and D leases, including preference right areas, into commercial leases, are subject to the regulations at parts 3900 and 3910, this part, and part 3930, except for lease sale procedures at subparts 3921 and 3924 and § 3922.40.

(b) A lessee of an R, D and D lease must apply for the conversion of the R, D and D lease to a commercial lease no later than 90 calendar days after the commencement of production in commercial quantities. No specific form of application is required. The application for conversion must be filed in the

§ 3927.10

BLM state office that issued the R, D and D lease. The conversion application must include:

(1) Documentation that there have been commercial quantities of oil shale produced from the lease, including the narrative required by the R, D and D leases;

(2) Documentation that the lessee consulted with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on communities and infrastructure;

(3) A bid payment no less than specified in § 3923.10 and equal to the FMV of the lease; and

(4) Bonding as required by § 3904.14 of this chapter.

(c) The lessee of an R, D and D lease has the exclusive right to acquire any and all portions of the preference right area designated in the R, D and D lease up to a total of 5,120 acres in the lease. The BLM will approve the conversion application, in whole or in part, if it determines that:

(1) There have been commercial quantities of shale oil produced from the lease;

(2) The bid payment for the lease met FMV;

(3) The lessee consulted with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on communities and infrastructure;

(4) The bond is consistent with § 3904.14 of this chapter; and

(5) Commercial scale operations can be conducted, subject to mitigation measures to be specified in stipulations or regulations, in a manner that complies with applicable law and regulation.

(d) The commercial lease must contain terms consistent with the regulations in parts 3900 and 3910 of this chapter, this part, and part 3930 of this chapter, and stipulations developed through appropriate NEPA analysis.

Subpart 3927—Lease Terms

§ 3927.10 Lease form.

Leases are issued on a BLM approved standard form. The BLM may modify those provisions of the standard form that are not required by statute or reg-

43 CFR Ch. II (10–1–24 Edition)

ulations and may add such additional stipulations and conditions, as appropriate, with notice to bidders in the notice of sale.

§ 3927.20 Lease size.

The maximum size of an oil shale lease is 5,760 acres.

§ 3927.30 Lease duration and notification requirement.

Leases issue for a period of 20 years and continue as long as there is annual minimum production or as long as there are payments in lieu of production (see § 3903.51 of this chapter). The BLM may initiate procedures to cancel a lease under subpart 3934 of this chapter for not maintaining annual minimum production, for not making the payment in lieu of production, or for not complying with the lease terms, including the diligent development milestones (see § 3930.30 of this chapter). The operator or lessee must notify the BLM of any change of address or operator or lessee name.

§ 3927.40 Effective date of leases.

Leases are dated and effective the first day of the month following the date the BLM signs it. However, upon receiving a prior written request, the BLM may make the effective date of the lease the first day of the month in which the BLM signs it.

§ 3927.50 Diligent development.

Oil shale lessees must meet:

(a) Diligent development milestones;

(b) Annual minimum production requirements or payments in lieu of production starting the 10th lease year, except when the BLM determines that operations under the lease are interrupted by strikes, the elements, or causes not attributable to the lessee. Market conditions are not considered a valid reason to waive or suspend the requirements for annual minimum production. The BLM will determine the annual production requirements based on the extraction technology to be used and on the BLM's estimate of the recoverable resources on the lease, expected life of the operation, and other factors.