a party to the contract had you paid royalty in money on all of the electricity you delivered to the state or county based on the wholesale value of the electricity. You must pay in money any royalty amount that is not offset by the credit allowed under this section, calculated based on the wholesale value of the electricity.

(c) The electricity the state or county government receives from you satisfies the Secretary's payment obligation to the state or county under 30 U.S.C. 191 or 30 U.S.C. 1019.

§ 218.307 How do I pay royalties due for my existing leases that qualify for near-term production incentives under BLM regulations?

If you qualify for a production incentive under BLM regulations at 43 CFR part 3212, your royalty due on the production BLM determines to be qualified for a production incentive is 50 percent of the amount of the total royalty that would otherwise be due under 30 CFR part 206, subpart H.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3200 and 3280

[W0–310 9131 PP]

RIN 1004–AD86

Geothermal Resource Leasing and Geothermal Resources Unit Agreements

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Bureau of Land Management's existing geothermal resources leasing and unit agreement regulations to implement the Energy Policy Act of 2005. The proposed rule would restructure existing regulations concerning the general geothermal leasing process and would revise existing regulations on royalties and readjustment of lease terms, conditions, and rentals. The rule would also revise existing regulations on lease duration and work commitment requirements, annual rental and credit of rental towards royalty, unit and communitization agreements, and acreage limitations. Additional revisions required by the Energy Policy Act include various technical corrections. Other proposed changes in sections unaffected by changes in the statute would clarify existing procedures, improve grammatical construction, conform the regulations to new administrative regulatory standards, and correct existing errors.

DATES: Send your comments to reach the Bureau of Land Management (BLM) on or before September 19, 2006. The BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153.

Hand Delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036.

E-mail: *comments_washington@BLM.gov.*

Federal eRulemaking Portal: *http://www.regulations.gov.*

Send comments on the information collections in the proposal to: Interior Desk Officer (1004–AD86), Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), (202) 395–6566 (facsimile); e-mail: *oira_docket@omb.eop.gov.* Please also send a copy to BLM.

FOR FURTHER INFORMATION CONTACT: Kermit Witherbee at (202) 452–0385 or Ian Senio at (202) 452–5049. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I File Comments?

You may submit your comments by any one of several methods:

- You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–D86.
- You may deliver comments to 1620 L Street, NW., Suite 401, Washington, DC 20036.
- You may comment directly via the internet by accessing our automated commenting system located at *www.blm.gov/nhp/news/regulatory/index.htm* and following the instructions there.
- You may e-mail your comment to: *comments_washington@blm.gov.* (Include ''Attn: AD86'' in the subject line).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Others Submit?

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their names and or home addresses, but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released.

We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The Bureau of Land Management (BLM) is proposing these new regulations to implement the Energy Policy Act of 2005 (P.L. 109–58), which became law on August 8, 2005. Sections 221 through 236 of this Act address geothermal development and substantially amend the Geothermal Steam Act of 1970. The Geothermal Steam Act of 1970, as amended, 30 U.S.C. 1001—1028, provides the authority for BLM to allow for the exploration, development, and utilization of geothermal resources on BLM-managed public lands, as well as geothermal resources on lands managed by other surface management agencies, such as the United States Forest Service.

One of the more significant changes in the Energy Policy Act of 2005 is the general requirement, with a few exceptions, for geothermal resources to be offered through a competitive leasing process. Lands not successfully sold in

the competitive process can be leased noncompetitively.

The Energy Policy Act also made significant changes in the way royalties are assessed on Federal leases. These changes were similar to, and in some cases identical to, recommendations in a 2005 report from the Geothermal Valuation Subcommittee (Subcommittee) of the Minerals Management Service's (MMS) Royalty Policy Committee (RPC). The RPC, established under the Federal Advisory Committee Act, makes recommendations on issues related to royalties on Federal resources and typically consists of representatives from Federal and State governments and industries paying royalties for the development of Federal resources. The Subcommittee was formed to address MMS's geothermal royalty valuation regulations in an effort to simplify the language and reduce administrative costs to the geothermal industry. The Subcommittee was composed of members from one industry association, several geothermal producers, two of the major states affected, and MMS staff. A BLM representative served as technical advisor to the Subcommittee. The Subcommittee's goal was to develop more efficient royalty valuation methods that would ensure a fair return to the Federal Government as well as to encourage geothermal development. The Energy Policy Act requires that for new leases in non-arm's length transactions or no-sale situations the royalty on electricity produced from geothermal resources be based on the gross proceeds from the sale of electricity, rather than on the ''net back'' system that was used prior to the Energy Policy Act. Lessees who use geothermal resources directly will pay fees according to a fee schedule that would be established by MMS. Under the new law, existing lessees have the opportunity to convert the royalty provisions in their leases to those of the Energy Policy Act. MMS is publishing proposed new regulations to implement the changes in the Energy Policy Act simultaneously with BLM's proposed rule. BLM and MMS have worked together to coordinate their proposed rules.

References to MMS rules appear throughout BLM's proposed rules because BLM and MMS share responsibility with regard to the geothermal leasing program. BLM holds lease sales, issues geothermal leases and generally administers the leases. BLM establishes the terms of the leases, including royalty rates, and enforces the lease terms. MMS is responsible for collecting rents (other than the first year's rent) and royalties, and for enforcing the royalty obligations. The proposed MMS rules contain provisions that carry out its responsibilities. Appropriate cross-references are contained both in the BLM and MMS regulations.

Other changes made by the Energy Policy Act include restructured lease terms (length of time a lease is in effect) and lease term extensions, and provisions for leases for exclusive direct use of geothermal resources, without sale, that may be issued noncompetitively. The Act also increased the maximum acreage of an individual lease and gave the Secretary of the Interior greater authority to require lessees to commit to unit agreements to conserve geothermal resources.

Most of the proposed changes in the regulations of this part would implement the new provisions of the Energy Policy Act. Other proposed changes in sections unaffected by changes in the statute would clarify existing procedures, improve grammatical construction, conform the regulations to new administrative or regulatory standards, and correct existing errors. Substantive changes unrelated to the change in statute are discussed under each subpart of this preamble.

III. Discussion of the Proposed Rule

Subpart 3200—Geothermal Resources Leasing

In subpart 3200, we propose changes to the definitions section and propose to add three sections to the end of the subpart.

Definitions

Section 3200.1 contains definitions of terms used throughout parts 3200 and 3280. The proposed rule would remove the definitions of terms and concepts that would no longer be used under the proposal (or were not used previously). Definitions proposed to be removed include ''additional term,'' ''cooperative agreement,'' ''extended term,'' and ''pay instead of produce in commercial quantities.''

Proposed new definitions include ''initial extension'' and ''additional extension.'' These two definitions reflect terms that are used in proposed subpart 3207, and implement concepts enacted in 30 U.S.C. 1005(a). The portion of the preamble discussing subpart 3207 addresses these changes.

Other definitions added include ''direct use'' and ''direct use leases.'' The proposed definition of the term ''direct use'' is taken from the definition at 30 U.S.C. 1001(g). The proposed definition would state that ''direct use means utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production or generation of electricity.'' The word ''generation'' is used in addition to the statutory word ''production'' to be consistent with the usage in 30 U.S.C. 1003(f), which also addresses direct use.

The proposed definition of the term ''direct use lease'' would be ''a lease issued in an area BLM designates as available exclusively for direct use of geothermal resources, without sale, for purposes other than commercial generation of electricity.'' This definition is intended to describe the geothermal leases that would be issued under proposed subpart 3205, which would implement 30 U.S.C. 1003(f).

The term ''geothermal exploration permit'' would be clarified to explain that a BLM authorization to conduct exploration activities would occur under a Notice of Intent to Conduct Geothermal Resource Exploration Operations, a specific BLM Form.

The term ''gross proceeds,'' used in the royalty context, would be defined through a cross-reference to the applicable MMS definition.

The term ''commercial production or generation of electricity'' would be defined to mean generation of electricity that is sold or is subject to sale, including the electricity or energy that is required to convert geothermal energy into electrical energy for sale. This term is needed in determining whether geothermal resource production is subject to royalties or direct use fees, as referenced in 30 U.S.C. 1004(b). The statute does not expressly address whether the electricity required to convert geothermal energy into electrical energy for sale (the parasitic load) should be considered as a component of the generation of electricity or should be considered as a direct use. BLM believes it is more appropriate to consider this as part of the electrical generation process both: (1) To encourage the production of geothermal resources (by not imposing a fee for a necessary cost of electricity generation); and (2) Because measurement of such usage would be difficult and expensive and the amount of moneys generated through the collection of fees would be quite small relative to the measurement effort.

The term ''commercial production'' would mean production of geothermal resources when the economic benefits from the production are greater than the cost of production. This proposed

definition would implement a term used in 30 U.S.C. 1004(f)(1), related to advanced royalties (see proposed § 3212.15). The term is also used for the purpose of qualifying for a drilling extension at proposed § 3207.14.

The term ''geothermal steam and associated geothermal resources'' would be slightly modified to follow the statutory definition at 30 U.S.C. 1001.

Types of Leases

Proposed § 3200.6 would provide general information explaining that under the proposed rule BLM would issue two types of geothermal leases. The first category would be leases that may be used for any type of geothermal use, such as commercial generation of electricity or direct use of the resource. Such leases would be competitively issued under subpart 3203 or noncompetitively issued under subpart 3204. The second category, a new category required by the Energy Policy Act of 2005 (30 U.S.C. 1003(f)), would be those that could only be used for direct use without sale, i.e., direct use leases issued under proposed subpart 3205.

Transition Rules

The Energy Policy Act of 2005 at 30 U.S.C. 1005(d), directed that the Secretary by regulation establish transition rules for leases issued before August 8, 2005. Little guidance was provided in that section except for requiring that the transition rules include provision for two-year extensions for leases nearing the end of their terms on August 8, 2005, under certain circumstances.

Proposed §§ 3200.7 and 3200.8 would contain transition rules, addressing how the revised regulations would apply to: (1) Leases in effect on August 8, 2005, the enactment date of the Energy Policy Act of 2005; and (2) Leases issued after August 8, 2005, but based on lease applications pending on August 8, 2005.

Proposed § 3200.7 would address the regulatory status of geothermal leases in effect on August 8, 2005. Existing Federal leases generally provide that they are subject to existing BLM rules, and also to future BLM regulatory changes. This makes sense because the agency continually makes changes to its regulatory programs, and lessees have no legitimate expectations as a general matter to remain forever subject to regulations in effect on the day their leases were issued. Accordingly, proposed § 3200.7 would make leases in effect on August 8, 2005, generally subject to the revised parts 3200 and 3280.

There are certain provisions of geothermal leases for which existing lessees did have reasonable expectations would not be changed, and on which they may have based their planned and existing operations. Therefore, the proposed rule, at § 3200.7(a)(1), attempts to capture such expectations by proposing an exception to the general rule. The exception would provide that leases in effect on August 8, 2005, would be subject to the regulations in effect on August 8, 2005, with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals.

Proposed § 3200.7(a)(2) would allow the lessee of a lease in effect on August 8, 2005, to elect to be subject to all of the regulations in part 3200 and part 3280, without regard to the exceptions in paragraph (a)(1). The lessee would have to make such an election no later than 18 months after a final rule becomes effective. The election derives from 30 U.S.C. 1003(d)(2) that allows a similar election to lessees whose lease applications were pending on August 8, 2005. BLM believes that leases in effect on August 8, 2005, should be treated as least as favorably as those lessees who only had an application pending on that date. Thus, BLM is proposing that an election be allowable. The proposed rule would make it clear that although a general election would be allowed, changes relating to royalty terms could only occur under the royalty conversion rules of proposed § 3212.25, discussed in the next paragraph and later in this preamble.

Proposed § 3200.7(b) would clarify that two other features of the Energy Policy Act of 2005 apply to leases in effect on August 8, 2005: Royalty conversion (section 224(e) of the Energy Policy Act) and production incentives (section 224(c) and (d) of the Energy Policy Act). The proposal would clarify that the lessee of a lease in effect on August 8, 2005, may: (1) Choose to convert lease terms relating to royalties under subpart 3212; or (2) If it does not convert lease terms relating to royalties, apply for a production incentive under subpart 3212 (if eligible under that subpart). Royalty conversion and production incentives are addressed later in this preamble.

Proposed § 3200.7(c) would implement the two-year extension authorized in the statute. Under the proposal, the lessee of a lease in effect on August 8, 2005, could apply to extend a lease that was within two years of the end of its term on August 8, 2005, for up to two years, to allow achievement of production under the lease or to allow the lease to be included in a producing unit.

Proposed § 3200.8 would implement 30 U.S.C. 1003(d)(2), relating to the status of geothermal lease applications pending on August 8, 2005, and the status of leases issued pursuant to such applications. That section of the Energy Policy Act of 2005 provides that pending lease applications and leases issued pursuant to those applications are subject to ''this section as in effect on the day before'' August 8, 2005 (30 U.S.C. 1003(d)(2)).

Although 30 U.S.C. 1003(d)(2) uses the term ''this section,'' BLM interprets it to mean the entire Geothermal Steam Act, as in effect on the day before August 8, 2005. Because § 1003 of the Act addresses the leasing process, interpreting the phrase ''this section'' to mean only § 1003 would allow pending lease applications to be processed noncompetitively, but would make the provision meaningless with regard to subsequently issued leases. Accordingly, BLM construes 30 U.S.C. 1003(d)(2) more broadly to allow leases issued pursuant to applications pending on August 8, 2005, to be subject to the regulations in effect before that date, to the same extent as leases in effect on August 8, 2005. In other words, leases issued pursuant to applications pending on August 8, 2005, would be subject to the revised parts 3200 and 3280, except that such leases would be subject to the regulations in effect on August 8, 2005, with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals. As provided in the statute, the proposal would allow lessees to elect to be subject to the revised rules in their entirety.

Subpart 3201—Available Lands

Existing subpart 3201 addresses which lands are available for geothermal leasing and which lands are not available for geothermal leasing. The proposed subpart would be substantively unchanged from the existing subpart. Changes have been proposed to clarify terminology, and improve grammar and readability.

Subpart 3202—Lessee Qualifications

Existing subpart 3202 addresses who may hold geothermal leases, qualifications to hold a geothermal lease, whether other persons are allowed to act on an applicant's behalf, and what happens if an applicant for a lease dies. The proposed subpart would be substantively unchanged from the

existing subpart. Changes have been proposed to clarify terminology, and improve grammar and readability. There are several places in existing regulations that the term ''offer'' is used incorrectly. This proposed rule would replace the term ''offer'' with the term ''application'' to make it clear that ''applications'' are filed by the public and ''offers'' are made by BLM.

Subpart 3203—Competitive Leasing

Subpart 3203 would explain the process for competitive leasing under the Energy Policy Act amendments to the Geothermal Steam Act. The new provisions at 30 U.S.C.1003 require competitive leasing to the highest responsible qualified bidder except as otherwise specifically provided in the Act. This new statutory scheme differs from the previous one, which provided for competitive bidding only for lands within a known geothermal resource area or lands from terminated, expired, or relinquished leases, or at BLM's discretion when there was public interest.

Proposed § 3203.5 explains the three stages of the competitive leasing process. It would also summarize the four specific circumstances in which leases would be issued on a non-competitive basis that are addressed in detail at Subparts 3204 and 3205.

Proposed § 3203.10 would describe the process for nominating lands for competitive sale. It would implement the new statutory provision, at 30 U.S.C. 1006, that a lease may not exceed 5,120 acres unless the area to be leased includes an irregular subdivision. The previous statutory restriction was 2,560 acres. This section would also explain how a nominator must describe the lands nominated. These land description provisions were previously found at § 3204.11. The only change from those provisions would be a clarification that lands surveyed under the public land rectangular survey system should be described to the nearest aliquot part. This section would also make clear that a nominator may submit more than one nomination, as long as each nomination satisfies the acreage and land description requirements and includes the required filing fee, and that BLM may reconfigure lands to be included in each parcel offered for sale.

Proposed § 3203.11 would implement the new statutory provision, at 30 U.S.C. 1003(e), that BLM may offer parcels as a block at a competitive sale when it is reasonable to expect that a geothermal resource that can be produced as one unit underlies those parcels.

Proposed § 3203.12 would provide for a filing fee for nominations of lands of $100 per nomination plus 10 cents per acre of lands nominated. BLM is authorized to charge reasonable filing fees under § 304(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1734(a). While the general Federal policy is to charge a processing fee that recovers the agency's reasonable processing costs (see OMB Circular No. A–25; 330 D.M. 1.3A; Solicitor's M-Opinion No. M–36987), BLM does not have cost data at this point regarding its cost for processing nominations. We are therefore proposing a nominal filing fee, which is not intended to reimburse the government for its processing costs, but instead to limit filings to serious applicants. See Solicitor's M-Opinion No. M–36987, ''BLM's Authority To Recover Costs of Minerals Document Processing,'' at n.6. In the final rule, we would move the amount of the fee from this section to the fee schedule at § 3000.12, cross-reference § 3000.12, and make a conforming change to § 3000.12. We will collect data on the costs of processing these nominations and expect to propose to charge a processing fee to cover agency costs in the future.

Proposed § 3203.13 would implement the new statutory requirement at 30 U.S.C. 1003(b) to hold a competitive lease sale at least once every 2 years in States where nominations are pending. This section would also allow for a sale to include lands in more than one State. Current regulations at § 3205.13 state that BLM will not accept bids which do not meet or exceed the fair market value as determined before the sale using generally acceptable appraisal methods. We have not included the requirement in this rule because we have concluded that the competitive bidding process itself is a reflection of the fair market value of the lease. Moreover, eliminating this bidding floor may encourage more competitive bidding, which both serves the Energy Policy Act policy of encouraging development of geothermal resources and is economically beneficial to the United States to the extent leases are issued competitively. This is because noncompetitive leases issued at a later date would be issued without any bonus bid (see discussion of proposed § 3204.11, below) and would have lower rates of rental (see discussion of proposed § 3211.11, below).

Proposed §§ 3203.14 and 3203.15 would describe how BLM will notify the public of competitive lease sales, the types of information BLM will include in a notice of sale, and how BLM will conduct the sale. These sections differ in some respects from sections in the current regulations at subpart 3205 that addressed competitive leasing under the former statutory scheme. Unlike the current regulations, the proposed sections would not restrict the competitive sale process to sealed bids, but would be flexible enough to allow other competitive sale formats, such as oral auctions. We anticipate that most sales would be conducted through an oral auction.

In order to protect the bidding process, we propose to add at § 3203.15(c) a standard auction requirement that a bid may not be withdrawn and that a bid constitutes a legally binding commitment. This is current BLM practice both in the geothermal and oil and gas leasing programs.

Proposed § 3203.17 would provide information related to the payment obligations of a successful bidder. Because the proposed competitive sale process would no longer be restricted to sealed bids, a bidder would not have to submit any payments unless at the end of the sale it was the high bidder. This section would provide that a successful bidder must pay twenty percent of the bid, the total first year's rental, and the processing fee by close of business on the day of the sale or such other time as BLM may specify. While the general expectation would be that these payments be made on the day of the sale, we propose to allow BLM to specify another time for payments to be made if circumstances so require, for example, the following business day. We also propose to add personal checks to the list of financial instruments that may be used to make it easier for the successful bidder to make payments immediately after the sale. Proposed § 3203.17(c), like current § 3205.16, would require that the balance of the bid be submitted within 15 calendar days after the sale.

Proposed § 3203.18 would cross-reference proposed subpart 3204, which would implement the statutory provision at 30 U.S.C. 1003(c) providing for the noncompetitive offering of parcels that did not receive bids in a competitive lease sale.

Subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases

Proposed subpart 3204 would describe when and how BLM will issue noncompetitive geothermal leases. The most common method of obtaining noncompetitive leases under this subpart would be to apply for parcels of land that did not receive bids in a competitive sale. This subpart would not address noncompetitive leases for lands available exclusively for direct

use of geothermal resources, which would be addressed at proposed subpart 3205.

Proposed § 3204.5 would describe the four types of lands available for noncompetitive leasing: (1) Parcels of land that did not receive bids in a competitive sale; (2) Lands available exclusively for direct use, addressed at proposed subpart 3205; (3) Lands subject to mining claims, addressed at proposed subpart 3204.12, and (4) Lands for which a lease application was pending on August 8, 2005, if the applicant so chooses.

Proposed § 3204.10 would require an applicant for a noncompetitive lease to submit a processing fee and advance rent. The advance rent would be refunded if the application were rejected or withdrawn. These provisions are substantively the same as current § 3204.12.

Proposed § 3204.11 would implement the statutory requirement at 30 U.S.C. 1003(c) that lands for which no bid was received in a competitive lease sale would be available for noncompetitive leasing for two years following the date of the competitive sale. The proposed sections would explain the procedures for this type of noncompetitive leasing, which are similar to the procedures for acquiring a noncompetitive oil and gas lease for lands that were not sold at a competitive lease sale. See 43 CFR 3110.2 and 3110.5–1. The section would provide that for the first 30 days following the competitive sale, applications would be accepted only for parcels as configured in the sale notice. As in the oil and gas regulations, this provision is for efficiency of administration. In the month following a sale, BLM processes both leases that sold at the lease sale and those for which noncompetitive applications are received after the sale; adding the burden of reconfiguring parcels during that period would slow down the process for other leases. Proposed § 3204.11 would also provide that all applications received for a particular parcel on the first business day after the competitive sale would be considered as simultaneously filed, and BLM would select one at random to receive a lease offer. As in the oil and gas regulations, this is intended to provide all interested parties an equal opportunity to apply during the first 24 hours after the lease sale.

BLM would not require a person to submit a bid for a noncompetitive lease to reflect fair market value because no bid had been received at the competitive lease sale. Moreover, it would be difficult for BLM to determine what an appropriate bid should be in that situation, and allowing leases to be obtained without a bid should encourage additional geothermal exploration and development.

Proposed § 3204.12 would implement the statutory provision at 30 U.S.C. 1003(b)(3) that allows a mining claimant with an approved plan of operations to apply for a noncompetitive geothermal lease.

Proposed § 3204.13 would implement a portion of the statutory provision at 30 U.S.C. § 1003(d)(2) that allows lease applications pending on August 8, 2005 to be processed under then-existing policies and procedures unless the applicant elects for the lease to be subject to the new leasing procedures.

Proposed § 3204.14, governing the amendment of noncompetitive lease applications, would provide that an applicant may amend an application at any time before BLM issues a lease if the amended application meets the requirements in this subpart and as long as the amendment does not add lands not included in the original application. To add lands, an applicant would have to file a new application. (The withdrawal of lands from noncompetitive lease applications would be covered by proposed § 3204.15, discussed below.) Section 3204.18 of the current regulations does not prohibit amendments that add lands, but provides that BLM will determine priority based on the date it receives the amended lease application rather than on the date of the original application. Current § 3204.18 does not differentiate between amendments that add lands and those that do not. We decided that adding lands to an application was equivalent to submitting a new application, thus requiring a change in the priority. We therefore propose to require that a new application be filed in cases of proposed amendments when an applicant wants to add lands to an already submitted application. Because amendments other than adding lands do not require BLM to revise the priority date, we do not propose to require a new application for such amendments.

Proposed § 3204.15 would provide that for 30 days after a competitive lease sale, BLM would not accept partial withdrawals of noncompetitive lease applications and would only accept withdrawals of entire noncompetitive lease applications. After 30 days, partial as well as whole withdrawals would be allowed at any time before BLM issues the lease. This would be a change from current § 3204.17, which does not contain the restriction in the first 30 days. This proposed provision is parallel to the provision at proposed § 3204.11 restricting noncompetitive applications for reconfigured lease parcels for the first 30 days following a competitive sale. If an applicant applied for a parcel as configured in the sale notice, then immediately applied to withdraw the application with respect to only a portion of the parcel, the result would be the same as applying for a reconfigured parcel. Allowing this would thus defeat the provision in proposed § 3204.11. Proposed § 3204.15 would also provide that if a partial withdrawal results in failure to meet the minimum acreage required for a lease in proposed § 3206.12, BLM will reject the lease application. This provision is in § 3204.17 of the current regulations.

Subpart 3205—Direct Use Leasing

The Energy Policy Act provides the authority for BLM to issue leases solely for the direct use of geothermal resources under certain conditions. Subpart 3205 would be a new subpart added to describe these conditions and the process for applying for a direct use lease. This subpart would implement the provisions of 30 U.S.C. 1003(f).

Proposed § 3205.6 would address the conditions under which BLM would issue a direct use lease to an applicant. ''Direct use lease'' as used in this subpart has a specific meaning, and is defined at proposed § 3200.1 as ''a lease issued in an area BLM designates as available exclusively for direct use of geothermal resources, without sale, for purposes other than commercial generation of electricity.'' Regular geothermal leases also permit direct use of the geothermal resource, which the lessee may choose not to sell, but that circumstance would not convert a regular geothermal lease into a direct use lease. A regular geothermal lessee may choose to sell the resource for direct use or may choose to use the resource for the commercial generation of electricity, choices that a direct use lessee does not have.

Proposed § 3205.6 would explain that a direct use lease may be issued only for lands that BLM has determined are appropriate for exclusive direct use, without sale, for purposes other than commercial generation of electricity. BLM would make the determination of whether the lands are appropriate for direct use leasing on a case-by-case basis at the time of application. The advantage of a direct use lease would be that it could be issued noncompetitively to the first qualified applicant if BLM determined that there was no competitive interest in the geothermal resources on the land to be leased. BLM would make this determination after publishing a notice of proposed leasing

and receiving no nominations to include the land in a competitive lease sale (as required by 30 U.S.C. § 1003(f)). Proposed § 3205.6 would also provide that the acreage covered by a direct use lease application could not exceed the quantity of acreage that is reasonably necessary for the proposed use, as required at 30 U.S.C. 1003(g).

Proposed § 3205.7 would specifically address the acreage restrictions applicable to a direct use lease as provided by 30 U.S.C. 1003(g) (not greater than reasonably necessary for the proposed use) and 30 U.S.C. 1006 (not more than 5,120 acres for any geothermal lease, except in the case of an irregular subdivision).

Proposed § 3205.10 would explain the procedures for applying for a direct use lease and the types of information to be submitted with an application. The information that is submitted is used by BLM to determine if the requested acreage is necessary for the intended operation as described in § 3205.7. This section would also require the submission of a nonrefundable processing fee for noncompetitive lease applications, as required by § 3204.12 of the current regulations.

Proposed § 3205.12 would address direct use lease applications for lands managed by an agency other than BLM, explaining that BLM would forward a copy of such an application to the other agency. If that agency consented to leasing and recommended that the lands were appropriate for a direct use lease, BLM would consider that consent and recommendation in determining whether to issue the lease. This section would require that BLM obtain the consent of the surface management agency before issuing a direct use lease.

Proposed §§ 3205.13 and 3205.14 would allow an applicant for a direct use lease to withdraw its application at any time or amend its application, without adding new lands, prior to lease issuance. To add new lands, an applicant would have to file a new application (see proposed § 3204.14).

Proposed § 3205.15 discusses how BLM will inform an applicant of its decision to approve or deny a direct use lease application.

Subpart 3206—Lease Issuance

Subpart 3206 in both the current and proposed regulations addresses lease issuance in general.

Proposed § 3206.10 is nearly identical to current § 3206.10, with the addition of a provision notifying applicants that all payments must be made before BLM will issue a lease. This addition reflects current BLM practice.

Proposed § 3206.11, which implements 30 U.S.C. 1026, is unchanged from current regulations except for changing the words ''will not significantly impact'' at the beginning of paragraph (b), to ''will not have a significant adverse impact on,'' which more closely tracks the language of 30 U.S.C. 1026(c).

Proposed § 3206.12 would address minimum and maximum lease sizes, which are addressed in the current regulations at § 3204.14. The maximum lease size would be increased from 2,560 acres to 5,120 acres, as provided at 30 U.S.C. 1006.

Proposed § 3206.13 would address the maximum acreage that one lessee may hold, which is addressed in the current regulations at § 3206.12. The proposed section is identical to the first sentence of current § 3206.12 and implements 30 U.S.C. 1006, which sets the limit at 51,200 acres in any one State. The remainder of § 3206.12 of the current regulations would be deleted because the Energy Policy Act amendments deleted those provisions in the statute.

Proposed § 3206.14 would explain how BLM computes acreage holdings. This proposed section is identical to current § 3206.13, except for minor editorial changes.

Proposed § 3206.15, explaining how BLM would charge acreage holdings if the United States owns only a fractional interest in the geothermal resources, is identical to current § 3206.14, except for minor editorial changes.

Proposed § 3206.16 would explain that acreage is not chargeable against the acreage limitations if it is included in any approved unit agreement or development or drilling contract. These exclusions would implement 30 U.S.C. 1017(d) and (g)(2) and are addressed at § 3206.15 in the current regulations. Reference in current regulations to cooperative agreements was deleted because they are no longer mentioned in this part.

Proposed § 3206.17, which would address what BLM does if a lessee's holdings exceed the maximum acreage limits set in proposed § 3206.13, is identical to § 3206.16 of the current regulations.

Proposed § 3206.18, which would address when BLM issues a lease, is identical to § 3206.18 of the current regulations, except for a minor editorial change.

Subpart 3207—Lease Terms and Extensions

Subpart 3207 would explain the new scheme of lease terms and extensions provided at 30 U.S.C. 1005.

Proposed § 3207.5 would summarize the new lease terms (length of time a lease is in effect) and lease term extensions, which include: (1) A ten-year primary term and two five-year extensions of the primary term; (2) A five-year drilling extension; (3) A production extension of up to 35 years; and (4) A renewal term of up to 55 years.

Proposed §§ 3207.10, 3207.11, and 3207.12 would address the primary term of a lease and explain the requirements for obtaining and continuing extensions of the primary term. The statute, at 30 U.S.C. 1005(b), includes a provision that ''for each year after the 10th year of the lease'' lessees must ''satisfy minimum work requirements prescribed by the Secretary that apply to the lease for that year.'' This section can be read as providing that the Secretary may require that a lessee complete certain work requirements in 1 year of the lease that apply to the following year of the lease, in terms of informing the Secretary's decision whether the lease may continue into that following year. Under this interpretation, a work requirement applicable to the 12th lease year would require that work be performed by the end of the 11th year, and a requirement applicable to the 11th lease year would require that work be performed by the end of the 10th year.

Even under an interpretation that 30 U.S.C. 1005(b) requires only that work be performed in the 11th lease year and thereafter, BLM must give effect to the statutory mandate at 30 U.S.C. 1005(a)(1) that the primary term at the beginning of a lease is ten years. BLM cannot wait until the end of the 11th lease year to determine whether to grant the initial five-year extension because that would provide lessees with a de facto primary term of 11 years, in contravention of the statutory mandate. Because the general rule-making authority granted to the Secretary at 30 U.S.C. 1023 allows the Secretary to prescribe rules appropriate to carry out the provisions of the Act, BLM has authority to prescribe work requirements that must be completed by the end of the 10th lease year, in order to give effect to the statutory ten-year primary term and provide a basis for deciding whether BLM will grant the initial 5-year extension.

Thus, § 3207.11 would provide requirements that a lessee must meet within the 10-year primary term for a lessee to be eligible for the initial 5-year extension of the primary term. BLM formulated its list of potential types of work that could be performed to meet the work requirements based on the statutory provision, at 30 U.S.C.

1005(b)(2). The provisions require that the work should establish a geothermal potential or, if that potential has been established, should confirm the existence of producible geothermal resources. The amount of work that must be performed is quantified as a minimum dollar expenditure per acre, as it is in the current regulations (see current §§ 3210.13 (diligent exploration requirements) and 3208.14 (significant expenditures)).

For the work requirements that must be completed by the end of the tenth year of the lease, we propose at § 3207.11(a) a $40 per acre expenditure over the ten-year period of the primary term of the lease, which is the same expenditure that is required at § 3210.13 of the current regulations for diligent exploration during the primary term. For work requirements for each year of the initial five-year extension, we propose at § 3207.12(a) an annual dollar expenditure of $15 per acre, which is the same as required at § 3208.14 of the current regulations for significant expenditures during a first lease extension. For work requirements for each year of the additional five-year extension, we propose at § 3207.12(c) an annual dollar expenditure of $25 per acre. We determined that the dollar expenditure for work requirements should increase enough during an additional extension to motivate a lessee to put a lease into production if it is not already producing in commercial quantities by the end of the 15th year. As the annual expenditure requirement would increase $11 per acre after the 10th lease year (from $40 over a 10-year period, or an average of $4 per acre per year, to $15 per acre per year), we are proposing that the expenditure requirement increase by a nearly equivalent amount—$10 per acre—after the 15th lease year (from $15 to $25 per acre per year). We believe this level of increase will serve the purpose of encouraging diligent development of the resource.

We are also proposing an automatic inflation adjustment for the minimum work requirements and for monetary payments in lieu of the work performance. We would include a provision in §§ 3207.11 and 3207.12 to adjust the dollar amount of the requirements automatically every three calendar years. The adjustment would be based on the Implicit Price Deflator for Gross Domestic Product that is published annually by the U.S. Department of Commerce. Because the work requirements would simply be based on a mathematical formula, we would make these adjustments in succeeding final rules without notice and comment. This is the procedure that BLM used in its cost recovery rule published on October 7, 2005 (70 FR 58872).

Proposed §§ 3207.11(b) and 3207.12(d) would allow a lessee to make minimum annual payments instead of performing the work requirements, as provided in the statute at 30 U.S.C. 1005(c). These sections would provide that a lessee may make a payment equivalent to the required work expenditure, such that the total of the payment and the value of the work performed equals the dollar value of the expenditure that would otherwise be required. As provided in the statute, these sections would also allow BLM to limit the number of years that it would accept such payments, if it determined that payments in lieu of work requirements would impair achievement of diligent development of the geothermal resource. We concluded that such impairment determinations were more appropriately made on a case-by-case basis and therefore we did not include in the rule a specific limit on the number of years that BLM will accept such payments.

The proposed rule would take a different approach than the approach contained in the existing rules regarding the amount of payments that would be allowable in lieu of work performance. Existing §§ 3210.15 and 3208.13 allow for a lessee to make payments in lieu of performing work requirements, but the payment amounts are substantially less than the value of the work otherwise necessary to be performed. The current rules thus appear to create a disincentive to the performance of work. BLM would reject the existing scheme in the proposal, and not allow payments in a lesser amount than the value of the required work. As stated above, if a lessee were to choose to make payments instead of performing work, the proposed rule would require a lessee to make minimum annual payments in amounts equivalent to the required work expenditure, such that the total of the payment and the value of the work performed equals the dollar value of the expenditure that would otherwise be required. By eliminating the disincentive to perform work, the proposal would further the statutory purpose of encouraging the development of geothermal resources.

Proposed §§ 3207.11(b) and 3207.12(d) would also provide that a lessee is exempt from work requirements if it submits documentation to BLM showing that it has produced or utilized geothermal resources in commercial quantities. This would implement 30 U.S.C. 1005(f), which provides that minimum work requirements do not apply after the date on which the geothermal resource is utilized in commercial quantities.

Proposed §§ 3207.11(c) and (e), and 3207.12(f) and (g) would provide timeframes for a lessee to submit information to BLM showing that it has met the work requirements or paid or produced in lieu thereof, explain the type of information that must be submitted, and explain BLM's approval process.

Proposed § 3207.12(e) would provide that if a lessee expends an amount greater than the dollar expenditure required in that year on suitable development activities, the lessee may apply any excess payment to any subsequent year within that same 5-year extension period. This is similar to § 3208.14(a) of the current regulations.

Proposed § 3207.13 would exempt from the work requirements a lessee whose lease overlies a mining claim when: (1) The mining claim has a plan of operations approved by the appropriate Federal land management agency; and (2) Development of the geothermal resource would interfere with the mining operations. This would implement 30 U.S.C. 1005(e).

Proposed §§ 3207.14 and 3207.15 would implement the 5-year drilling and 35-year production extensions provided for in the statute at 30 U.S.C. 1005(g). The previous version of the statute contained not only these extensions (at former 30 U.S.C.1005(c)), but also a separate 40-year production extension (at former 30 U.S.C. 1005(a)). Because the 2005 statutory amendments eliminated the 40-year production extension, we examined more carefully the language of the 5-year drilling and 35-year production extension provision, to determine its applicability. We concluded that the language in the statute supports applying the 5-year drilling and 35-year production extensions to regular leases, as well as to leases under cooperative or unit agreements.

The statute provides for a drilling extension only if a lessee is engaged in qualifying drilling operations at the time the primary term ends. (See 30 U.S.C. 1005(g).) Under the new statutory and regulatory scheme, if the lessee has submitted information showing that it has met the applicable requirements (work activities or payment or production in lieu thereof), the primary term would be extended each year past the 10th year and would end only at the end of the 20th year. If, however, the lessee fails to submit information showing that it has met the applicable requirements during any extension year

after the 10th lease year, the lease would terminate at the end of that year. (See discussion of proposed §§ 3207.11 and 3207.12, above.) Thus, proposed § 3207.14 would allow the drilling extension only if: (1) A lessee was drilling over the end of the 20th lease year (when the primary term would end due to lease expiration); or (2) A lessee had failed to submit information showing that it had met the requirements for an extension of the primary term and was drilling over the end of a year subsequent to the 10th year (in which case the primary term would terminate due to a failure to comply with requirements). The proposed section would further specify that to qualify for the drilling extension, the lessee must be drilling a well for the purposes of commercial production to a target that BLM determines is adequate, based on the local geology and type of proposed development. The proposed section would also provide, as does the statute, that the lease would expire if, at the end of the five-year drilling extension, the lessee did not qualify for a production extension (*i.e.*, if the lessee was not producing or utilizing the geothermal resource in commercial quantities—see discussion of proposed § 3207.15, below).

Proposed § 3207.15 would provide a production extension of up to 35 years for a lease that is: (1) Actually producing geothermal resources in commercial quantities; or (2) Has a well capable of producing geothermal resources in commercial quantities and the lessee is making diligent efforts to utilize the resource. This would reflect the definition at 30 U.S.C. 1005(h) of ''produced or utilized in commercial quantities.'' Although that term would be defined at § 3200.1, we also propose to include the definition in this section for the reader's convenience. The section would also indicate what types of information a lessee must provide to BLM for it to determine whether to grant a production extension. A lessee with a BLM-approved utilization plan allowing for seasonal operation would be eligible for the production extension as long as it was producing or utilizing the geothermal resource in commercial quantities during the periods that the utilization plan provided for operations.

Proposed § 3207.16 would implement the lease renewal provision at 30 U.S.C. 1005(g). The statute provides for renewal ''for a second term.'' We have interpreted ''second term'' to mean a period equal to the length of the primary term including the initial and additional extensions (a total of 20 years) plus the length of the production extension (up to 35 years) for a total renewal period of up to 55 years. This section would also specify that the renewal term continues only so long as the lessee is producing or utilizing geothermal resources in commercial quantities. The term ''produced or utilized in commercial quantities'' is defined in proposed § 3200.1.

Proposed § 3207.17 would provide that leases committed to a unit agreement that would expire before the unit term would expire may be extended to match the term of the unit if unit development has been diligently pursued. Paragraph (a) of this section is virtually identical to the current regulation at § 3208.10(a)(4), with a slight change in wording to remove any implication that the holder of the expiring lease must be the one to have diligently pursued unit development.

Proposed § 3207.18 would implement 30 U.S.C. 1017(f)(3) and provide that a lease that is eliminated from a unit is eligible for a drilling extension or a production extension if it meets the requirements for such extensions.

Subpart 3208—Extending the Primary Lease Term

Existing subpart 3208 would be removed because under this proposed rule the subject of extensions of lease terms would be addressed in proposed subpart 3207.

Subpart 3209—Conversion of Lease Producing Byproducts

Existing subpart 3209 would be removed because the lease conversions that subpart covers are no longer allowable under the Energy Policy Act of 2005.

Subpart 3210—Additional Lease Information

Proposed §§ 3210.10 and 3210.11 on lease segregation would remain substantively unchanged from the existing sections.

Proposed § 3210.12 would reference new lease size limits and the processing fee for lease consolidations. In other respects, it would be substantively unchanged from the existing section.

Existing §§ 3210.13, 3210.14, 3210.15, and 3210.16, all of which pertain to diligent exploration requirements, would be removed. These provisions would be addressed by the sections related to work requirements in proposed subpart 3207. Despite their removal, their substantive terms would continue to be applicable to leases existing on August 8, 2005 and leases issued after August 8, 2005 in response to applications pending on that date, unless the lessees elect to be subject to the new regulatory requirements that would be adopted in this rulemaking.

Proposed § 3210.13 on leasing or locating minerals on a geothermal lease would remain substantively unchanged from existing § 3210.17.

Proposed § 3210.14, pertaining to readjustment of the terms and conditions of geothermal leases, would replace existing §§ 3210.18, 3210.19, and 3210.20 that relate to the same topic. It would implement 30 U.S.C. 1007, as revised by the Energy Policy Act of 2005. Proposed § 3210.14(a) on readjustment of lease terms and conditions would replace existing §§ 3210.18 and 3210.19(a). With one exception, proposed paragraph 3210.14(a) would be substantively unchanged from existing § 3210.18. Existing § 3210.18 provides that once BLM and the other agency reach agreement, BLM will readjust the terms of the lease. The existing rule does not state, as the statute requires at 30 U.S.C. 1007(c), that the other agency must approve the readjustment. Proposed § 3210.14(a)(2) would clarify that the other agency must approve the proposed readjustment. ''Approval'' is the term used in 30 U.S.C. 1007(c).

Proposed § 3210.14(b) would replace existing § 3210.20(a). The existing 22.5 percent royalty cap for readjusted leases would be removed because that cap is no longer in the statute.

Proposed §§ 3210.14(c), (d), and (e) would implement the procedures of 30 U.S.C. 1007(b), and are somewhat different than the procedures in existing rules at 43 CFR 3210.19 and 3210.20. Under existing §§ 3210.19(a) and 3210.20(b), BLM notifies lessees in writing of proposed readjustments and provides the lessee 30 days to object in writing to the new terms. The existing rules provide further that if a lessee does not object, the proposed new terms will become part of an existing lease and that if a lessee does object, BLM will issue an appealable final decision on the new terms and conditions. The existing rules, however, do not expressly mention certain concepts contained in the statute that are described below.

Under the proposal BLM would give a lessee a written proposal to adjust the rentals, royalties, or other terms and conditions of its lease. The lessee would have 30 days after receiving the proposal to file with BLM an objection in writing to the proposed new terms and conditions. If the lessee does not object in writing or relinquish its lease, it would conclusively be deemed to have agreed to the proposed new terms and conditions. This concept, implied but not expressly stated in the existing

rules, is taken directly from the statute. BLM would then issue a written decision under proposed § 3210.14(d), setting the date that the new terms and conditions become effective as part of the lease. This decision would be in full force and effect under its own terms, and under proposed § 3210.14(d), the lessee would not be authorized to appeal the BLM decision to the Department's Office of Hearings and Appeals.

Proposed paragraph (e) establishes procedures for the situations where a lessee files a timely objection to the proposed readjustment and is intended to implement a portion of 30 U.S.C. 1007(b) that is not addressed in existing regulations. Under proposed paragraph (e)(1), if a lessee files a timely objection in writing, BLM could issue a written decision making the readjusted rental and royalty terms effective no sooner than 90 days after receiving the objections, unless BLM reaches an agreement with the lessee as to the readjusted terms of the lease that makes such terms effective sooner.

Under proposed § 3210.14(e)(2), if BLM does not reach an agreement with the lessee by 60 days after receiving the lessee's objections, then either the lessee or BLM may terminate the lease, upon giving the other party 30 days' notice in writing. This provision is contained in 30 U.S.C. 1007(b), but does not appear in the current regulations. The proposed rule would clarify that a lease termination under proposed paragraph (e)(2) would not affect a lessee's obligations that accrued under the lease when it was in effect, including those specified in § 3200.4.

Unlike a BLM decision under proposed § 3210.14(d), a lessee could appeal a BLM readjustment decision under proposed § 3210.14(e)(1). Proposed § 3210.15 would address such appeals. It would provide that if a lessee appeals BLM's decision under § 3210.14(e)(2) to readjust lease terms and conditions, or rental or royalty rate, the decision would be effective during the appeal. If the lessee wins its appeal and BLM would have to change its decision, the lessee would receive a refund or credit for any overpaid rents or royalties.

In summary, BLM would provide a lessee 30 days to object to a proposed readjustment decision. If the lessee objects, BLM could issue a written decision making the readjusted rental and royalty terms effective no sooner than 90 days after receiving the objection. A lessee would have 30 days to appeal that decision under Office of Hearings and Appeals regulations. In addition to the appeal process, BLM and the lessee could attempt to negotiate an agreement within 60 days after receiving the objection. If an agreement is reached, the appeal would be withdrawn. If an agreement is not reached, either the lessee or BLM could terminate the lease, even if an appeal would be pending.

Proposed §§ 3210.16 and 3210.17, relating to drainage of geothermal resources, would be substantively unchanged from existing §§ 3210.22 and 3210.23.

Subpart 3211 Filing and Processing Fees, Rent, Direct Use Fees, and Royalties

Existing § 3211.10 establishes filing fees, rent, and minimum royalties for geothermal leases. In the proposed rule, existing § 3211.10 would be split into several new sections because of the changes to lease rental rates, royalty rates, and minimum royalty requirements in the Energy Policy Act of 2005. Proposed § 3211.10 would only address processing and filing fees. Rather than listing the various fees for lease nomination, lease filing, and subsequent lease transactions, proposed § 3211.10 would reference existing 43 CFR 3000.12, which sets fees for all mineral applications and transactions. BLM expects to update § 3000.12 from time to time to reflect actual costs associated with these activities. If the specific fees were included in this part, the geothermal regulations would have to be changed every time fees were revised.

Proposed § 3211.11 would establish rental rates for geothermal leases. The new lease rental rates would be taken directly from 30 U.S.C. 1004(a)(3)(A) and (B). The rental rates in the Energy Policy Act of 2005 have changed significantly from the rental rates in the existing regulations. While the rental for noncompetitive leases remains at $1 per acre per year for the first 10 years, the rental for competitive leasing has increased from $2 per acre per year to $3 per acre per year from years 2 through 10. Starting with the eleventh year, the rental rate for all leases increases to $5 per acre per year. Proposed § 3211.11(d) would carry forward the current provision regarding fractional mineral interests that currently is contained in § 3211.13. The references to minimum royalties in the existing rule would be removed because the Geothermal Steam Act as revised by the Energy Policy Act no longer provides for minimum royalties.

Proposed § 3211.12 is virtually the same as existing § 3211.12. The Energy Policy Act of 2005 did not make any changes to whom the rent is paid for the first year and subsequent years.

Proposed § 3211.13 addresses when rental payments are due and would replace existing § 3211.11. The rule would provide that rent is always due in advance. MMS must receive annual rental payments by the anniversary date of each lease year. If less than a full year remains on a lease, a lessee must still pay a full year's rent by the anniversary date of the lease. The payment of rent in advance is required by 30 U.S.C. 1004(a)(3). As this was also required in the original Steam Act of 1970, there are no substantial changes to this portion of the provision. The reference in existing § 3211.11 to the automatic termination of leases by operation of law would not be included in the new section because the statute has changed in this regard. Lease termination for non-payment of rental is addressed in § 3214.14 of this proposed rule and is discussed later in this preamble.

Proposed § 3211.14 would require that a lessee must always pay rental, whether the lease is in a unit or outside of a unit, whether the lease is in production or not, and whether royalties or direct use fees apply to production from the lease. This would be a substantial change from existing §§ 3211.14 and 3211.15. Under the current regulations, based on Section 5(d) of the Geothermal Steam Act (30 U.S.C. 1004(d) in effect prior to the Energy Policy Act of 2005), rent was not required once the lease went into production or was deemed to have a well capable of production. Under the earlier statute, the lessee paid a royalty on production, or a minimum royalty of $2 per acre per year, whichever was greater ''in lieu'' of rent. The Energy Policy Act of 2005 does not contain the ''in lieu'' language, and also eliminated the requirement of a minimum royalty. The statute now requires rent to be paid as long as the lease is in effect (but does allow a credit against royalties, as discussed below). There are no provisions in the Energy Policy Act of 2005 to waive or alter the rental requirement for leases committed to a unit or pooling agreement and there are no distinctions, other than the rental rate, for leases obtained competitively or noncompetitively, or used for direct use or commercial electrical generation.

Existing § 3211.17 would be removed because, as mentioned above, minimum royalties would no longer apply to new leases.

It should be noted that, even if BLM were to finalize these proposed rules, under proposed § 3200.7(a) the rental and minimum royalty schemes of the existing regulations would continue to

apply to leases in effect on August 8, 2005, unless the lessees elect under proposed § 3200.7(a)(2) to have the new regulatory provisions apply to them. This also applies to leases issued after August 8, 2005, in response to applications pending on that date.

Proposed § 3211.15, together with applicable MMS regulations, would implement 30 U.S.C. 1004(e), which requires that the advance rental payments be credited towards royalty due on production in that lease year. The rule would provide that a lessee may credit rental towards royalty under MMS proposed regulations at 30 CFR 218.303. Under the statute the rental credit against royalty is allowed only for rent paid before the first day of the year for which the rental is owed. In other words, no credit would be allowable for rent paid after the lease anniversary date, even if the lease were not terminated. Thus, although lessees would be allowed to maintain their leases by paying rent plus a late fee within 45 days of the lease anniversary date, they could not credit such late rental payments against royalties.

Also, there are no provisions in the Energy Policy Act of 2005 to carry over rental paid in excess of royalty from one lease year as a credit against royalty for production in another year. Because rental is always due on a lease, the rental payment effectively becomes the equivalent of a minimum royalty payment that was required prior to the Energy Policy Act of 2005.

Proposed § 3211.16 would provide that rental paid could not be credited against fees owed for direct use of geothermal resources. This would also appear in proposed MMS proposed regulations at 30 CFR 218.304. The Energy Policy Act of 2005 (30 U.S.C. 1004(e)), allows only the ''crediting of rental towards *royalty*'' (emphasis added). Rentals cannot be credited towards the payment of direct use fees because a clear distinction exists between ''royalties'' and ''fees'' in the Energy Policy Act of 2005. Under 30 U.S.C. 1004(b), the provision that establishes direct use fees, direct use fees are paid ''in lieu of royalties'' for direct use of geothermal resources that a lessee uses for a purpose other than the commercial generation of electricity and does not sell. Thus, such fee payments would not constitute royalty payments. Under the proposed rule, lessees would pay direct use fees in addition to rental.

Proposed § 3211.17 would establish royalty rates on geothermal resources produced from or attributable to a geothermal lease that are used in the commercial generation of electricity from or attributable to a geothermal lease. The Energy Policy Act of 2005 (30 U.S.C. 1004(a)(1)(A) and (B)) provides for a royalty on the sale of electricity produced from geothermal resources ranging from 1 percent to 2.5 percent of gross proceeds for the first 10 years of production, and from 2 percent to 5 percent of gross proceeds thereafter. BLM interprets this section of the Energy Policy Act to apply to situations in which the lessee does not sell the geothermal resource produced from its lease or engages in a non-arm's-length transaction. Although the statute establishes an allowable royalty range, the statute contemplates under 30 U.S.C. 1004(c) that actual royalty rates would be established by regulation. Under proposed § 3211.17(a)(1)(i), BLM would establish one royalty rate, 1.75 percent, that would apply to geothermal leases in the first 10 years of a lease, and a second royalty rate, 3.5 percent, that would apply in subsequent years with respect to geothermal resources that a lessee or its affiliate uses to generate electricity that it sells. Proposed § 3211.17(a)(1)(iii) would reiterate the language in the Energy Policy Act of 2005 that the percentages in paragraphs (i) and (ii) must be applied to the gross proceeds from the sale of electricity, as opposed to the gross proceeds from the sale of the geothermal resource, and would specify that gross proceeds must be determined in accordance with applicable proposed MMS rules.

Proposed § 3211.17(a) would apply to leases issued on or after August 8, 2005, except for those leases issued in response to lease applications that were pending on August 8, 2005 that would be subject to the BLM regulations in effect on that date. Under proposed § 3200.8(b), lessees of leases issued in response to lease applications that were pending on August 8, 2005, could elect to have the new royalty rates apply to such leases.

The methodology prescribed in 30 U.S.C. 1004(a)(1)(A) and (B) represents a significant change from the way royalty is currently determined. For leases issued before August 8, 2005 (and for leases issued in response to applications that were pending on August 8, 2005, that are subject to existing BLM rules), a royalty rate from 10 percent to 15 percent of the value of the geothermal resource is in effect. Historically, arms-length sales of geothermal resources from a lessee to a third party utility were common and the arms-length transaction established the value of the resource. For most situations where there was no sale of geothermal resource (as is the case for virtually all existing leases), the value of the geothermal resource was artificially derived using the ''netback'' method developed by MMS, a method that in practice has been cumbersome for both MMS and the lessees, and often resulted in almost no royalty being paid. For example, lessees at The Geysers geothermal field informed MMS that the netback method was unworkable and negotiated with MMS to adopt a simpler ''percent of gross proceeds'' method instead.

The Energy Policy Act of 2005 simplifies the way in which royalty is valued by basing royalties on a percentage of gross proceeds derived from the sale of electricity. Section 1004(c) of the Act requires that the royalty rate provide a simplified administrative system, encourage new development, and be revenue neutral for a period of 10 years when compared to the valuation methods currently in place. The change to a ''percent of gross proceeds'' method for all new leases would accomplish the first two mandates of the Energy Policy Act of 2005. Such a method would be easier for BLM, MMS, and industry to administer than the current scheme, and this should help encourage development.

In establishing the proposed royalty rates, BLM has relied upon the rates recommended by the MMS Royalty Policy Committee (RPC) Geothermal Valuation Subcommittee. Both the RPC and the Geothermal Subcommittee were chartered under the Federal Advisory Committee Act, and included representatives from the geothermal industry, State and local government, and the public at large. The rates recommended by the Subcommittee were 1.75 percent for the first 10 years, and 3.5 percent thereafter. The 3.5 percent royalty rate was based on the national average amount of royalty that is currently paid from producing Federal geothermal leases. In 2003 and 2004, the average royalty rate, expressed as a percent of gross proceeds, was 3.64 percent and 3.94 percent, respectively.

According to the Geothermal Valuation Subcommittee Report (May, 2005, page 10), ''Under the netback method, historically during the beginning years of an electrical generation project (between 1–10 years), lessees pay a very low percentage of the gross proceeds from the sale of electricity and in later years of the project (after 10 years), the percentage increases * * *. The recommended proposal [1.75 percent and 3.5 percent] attempts to replicate this historical trend under the netback method over the long term.'' Although the RPC recommendation is not based on a

detailed study, it was intended to achieve revenue neutrality for both the initial 10 years, and subsequent years. Because the royalty rate range established in the statute for the time period beyond the first 10 years is double that of the first 10 year period, BLM believes the intent of Congress was to require a higher royalty rate in subsequent years to account for projected higher electrical prices and fewer capital expenditures.

BLM also expects to conduct a study that would project royalty received from existing projects using the existing valuation methods, over the next 10 years. A percent of gross proceeds that would generate an equivalent amount royalty would then be determined. BLM anticipates that the study we are contracting could refine the proposed rates, but would not change them substantially. While there is no specific guidance in the Energy Policy Act of 2005 regarding revenue neutrality past the next 10 years, the study may also address royalties under the existing methods from 10 years to 40 years.

The Energy Policy Act of 2005, as codified at 30 U.S.C. 1004(a)(1)(A) requires a royalty of 1 percent to 2.5 percent of gross proceeds from the sale of electricity ''during the first 10 years of production under the lease.'' BLM is interpreting this language to mean that the 10-year period to which the 1.75 percent royalty rate applies would start during the month for which commercial operation is first achieved, and would continue for 120 consecutive months, unless a suspension of operations and production was granted under 3212.

Proposed § 3211.17(a)(2) would set the royalty rate for the arms-length sale of resources at 10 percent of gross proceeds from that sale. The Energy Policy Act of 2005 is silent regarding the situation where the lessee sells the resource to an unaffiliated purchaser that produces electricity, rather than the electricity itself. To address these situations, BLM is using the recommendations found in the Geothermal Valuation Subcommittee Report (May, 2005, page 9) which states that ''[t]he lessee shall pay a royalty on the geothermal resources sold under arm's-length conditions to a plant that generates electricity based on a royalty rate in the lease multiplied by the gross proceeds the lessee derives from the sale of the geothermal resources.'' The Geothermal Steam Act, prior to the amendments of the Energy Policy Act of 2005, required a royalty rate of 10 to 15 percent, and current BLM practice is to issue all leases with a royalty rate of 10 percent. Section 2 of the standard lease terms listed on BLM form 3200–24, ''Offer to Lease and Lease for Geothermal Resources,'' sets the royalty rate at 10 percent. The ten percent royalty rate in this proposed paragraph would be adopted from the current practice, and is one that the Subcommittee Report characterized as ''[n]o change in royalty valuation.''

While the 10 percent royalty rate in the case of an arms-length sale of resources for the commercial generation of electricity could appear to require higher payments by a lessee than the 1.75 and 3.5 percent that would be required for ''no-sales'' situations in paragraph (a)(1), the actual amount of royalty paid would be roughly equivalent. This is because the 10 percent rate would apply to the gross proceeds from the sale of the geothermal resource, whereas the 1.75 and 3.5 percent rates for electrical generation would apply to the gross proceeds from the sale of electricity. The electricity generated represents a refined product with a much higher value than the heat resource entering a power plant. Therefore, 1.75 and 3.5 percent of a high-value product would be roughly equivalent to 10 percent of a lower value product. Because the proposed 10 percent royalty on the gross proceeds from an arms-length sale of resource required by § 3211.17(a)(2) is the same as the royalty that would be required under existing lease terms, this paragraph would be revenue neutral.

As discussed earlier, the royalty rates for geothermal leases in effect on August 8, 2005 would continue under the existing terms of such leases, unless a lessee converted to the royalty terms of the new statute under proposed § 3212.25. Eligibility for and procedures for such conversions are discussed later in this preamble in the discussion of Proposed subpart 3212. When such conversions do occur, proposed § 3211.17(b) would establish the royalty rates for different conversion situations.

Conversion of the royalty terms of existing geothermal leases is governed by section 224(e) of the Energy Policy Act of 2005. That section does not make the royalty rate ranges stated in 30 U.S.C. 1004(a)(1) applicable to existing leases that are converting to new royalty terms. Instead, the royalty conversion language in § 224(e)(1)(B) of the Energy Policy Act of 2005 requires that except for leases where the geothermal resource is used for a direct use to which a fee schedule applies, royalties are to be computed on a percentage of the gross proceeds from the sale of electricity. Under the statute the royalty rate is to be set at the percent of gross proceeds to ''yield total royalty payments equivalent to payments that would have been received from comparable production under the royalty rate in effect for the lease before the date of enactment * * *.'' Thus, under proposed § 3211.17(b)(1), BLM would seek to determine a percentage of gross proceeds from the sale of electricity that would result in the same amount of royalty to be paid as the current valuation method. The determination of such a royalty rate would be done on a case-by-case basis, and would be based on the information submitted by the applicant.

As required by § 224(e)(1)(B) of the Energy Policy Act of 2005, proposed § 3211.17(b)(1) would apply to converted leases that produce geothermal resources that are used to generate electricity that is sold, regardless of whether the geothermal resource is sold in an arm's-length transaction to the generator of electricity or the lessee or its affiliate generates the electricity. In a situation where a lessee engages in an arm's-length sale of the geothermal resource to the generator of the electricity that is sold, BLM would not approve the conversion unless BLM had adequate assurance that the lessee will have access in the future to the amount of gross proceeds from the sale of the electricity so that the royalty could be determined. BLM understands that no existing lessee currently engages in arms-length sales of geothermal resources to commercial generators of electricity, but that could change in the future.

In addition, § 3211.17(b) would establish the royalty rate for leases that elect to convert to the royalty terms of the Energy Policy Act of 2005, but have never produced geothermal resources. For these cases, BLM would have no data on which to determine a royalty rate that would be revenue neutral. Therefore, BLM would assign the royalty rates in proposed § 3211.17(a) (1.75 percent for the first 10 years and 3.5 percent thereafter). Because the royalty rates in proposed § 3211.17 were derived to be revenue neutral, this would meet the intent of section 224(e)(1)(B) of the Energy Policy Act of 2005.

Proposed § 3211.17(b)(2) would reiterate language in section 224(e)(1) of the Energy Policy Act of 2005, requiring the gross proceeds established for leases that are converting royalty terms, to be based on gross proceeds from the sale of electricity, and not on gross proceeds from the sale of geothermal resources, and would make it clear that the determination of gross proceeds would occur under proposed MMS regulations at 30 CFR part 206, subpart H.

Proposed § 3211.17(c) would be included to address royalty rates for existing leases and leases issued from applications pending on August 8, 2005, that choose not to convert to the royalty terms of the Energy Policy Act of 2005. The royalty rates for these leases have already been established in existing leases and the lease form. This paragraph would not establish new requirements, but would be included for completeness and convenience of the reader.

Proposed § 3211.18 would implement 30 U.S.C. 1004(b) and section 224(e)(1)(A) of the Energy Policy Act and would address the royalty rates for the direct use of production from or attributable to a geothermal lease.

Proposed § 3211.18(a) would establish the royalty rates for new leases (other than leases issued in response to applications that were pending on that date for which the lessee elects to be subject to royalty regulations in effect on that date) and for existing leases whose royalty terms are modified under proposed § 3212.25. Paragraph (a)(1) would provide that a royalty rate does not apply to the direct use of geothermal resource production that a lessee or its affiliate does not sell. Instead, a lessee would pay direct use fees according to a schedule published by the MMS. (See the MMS proposed regulations at 30 CFR 206.356 for the schedule.) The direct use fee schedule would apply to traditional direct uses such as greenhouse heating, space heating, and industrial heating applications, as well as to non-commercial generation of electricity as described under proposed § 3211.18(c), below.

Under proposed § 3211.18(a)(2), a lessee who produces a geothermal resource and sells it at arm's-length to a purchaser who uses it for direct use purposes would be required to pay a royalty of ten percent. The rule would provide further that the ten percent royalty rate would be applied to the gross proceeds derived from the arm's-length sale under applicable proposed MMS regulations at 30 CFR part 206, subpart H. Proposed § 3211.18(a)(2) would maintain the current royalty rate of 10 percent set in existing 43 CFR 3211.10.

The Energy Policy Act of 2005 does not address situations where a lessee sells geothermal resources in an arm's-length sale to a purchaser who utilizes such resources for direct use purposes. Under 30 U.S.C. 1004(b)(1)(B), the required schedule of fees applies only to those situations where the lessee ''does not sell'' geothermal resources. Because the royalty provisions in § 1004(a)(1) of the Act specifically refer to electrical generation, they do not cover sale for direct use, either. To the extent that a gap exists in the statute, we would fill that gap with respect to new leases under the rulemaking authority of 30 U.S.C. 1023.

Similarly, a gap exists under the royalty conversion provisions of § 224(e)(1) of the Energy Policy Act of 2005. Section 224(e)(1)(A) establishes the royalties for converted leases that meet the requirements of 30 U.S.C. 1004(b), i.e., leases whose geothermal resources are used for direct use purposes where no sale of the geothermal resources occurs. Section 224(e)(1)(B) establishes the royalties for converted leases that involve the sale of electricity (royalties are to be based upon a percentage of gross proceeds from the sale of electricity). Neither subparagraph establishes the royalty rate for converted leases where a lessee sells geothermal resources in an arm's-length sale to a purchaser who utilizes such resources for direct use purposes. Thus under proposed § 3211.18(a)(2), we would fill that gap with respect to converted leases under the rulemaking authority of 30 U.S.C. 1023.

While the 10 percent royalty rate in the case of an arm's-length sale of direct use resources could appear to require higher payments by a lessee than the 1.75 percent to 3.5 percent required for electrical generation under proposed § 3211.17, the actual amount of royalty paid would be roughly equivalent. This is because the 10 percent rate for direct use applies to the value of the resource and the 1.75 percent and 3.5 percent rates for electrical generation applies to the gross proceeds from the sale of electricity. The electricity generated represents a refined product with a much higher value than the heat resource being sold for direct use. Therefore, 1.75 percent and 3.5 percent of a high-value product is roughly equivalent to 10 percent of a lower value product.

The new statute, at 30 U.S.C. 1004(b)(3), requires that if a State, tribal, or local government is the lessee and uses geothermal resources without sale and for public purposes other than commercial generation of electricity, the Secretary must charge only a nominal fee for use of the resource. Proposed § 3211.18(a)(3) would address this provision of the statute by referencing proposed MMS rules that would implement this provision (see proposed 30 CFR 206.366). The fee that MMS sets would be paid in addition to the rental due on the lease.

Proposed § 3211.18(b) would be included to clarify that for leases issued before August 8, 2005, that do not convert the royalty terms of their lease, and for leases issued from applications pending on August 8, 2005, where the lessee elects not to convert, the royalty rate is established in the lease form and those leases will continue to use existing royalty rates. This paragraph would not establish new requirements, but would be included for completeness and convenience of the reader.

Proposed § 3211.18(c) would be added to clarify BLM's interpretation of how to address non-commercial generation of electricity. If a lessee generates electricity that is used solely for the operation of a direct use facility and does not sell the electricity, this would be considered a direct use subject to the direct use fee schedule.

The new statute, 30 U.S.C. 1004(b)(1), restricts the use of the direct use fee schedule to situations where the resource is used ''for a purpose other than the commercial generation of electricity.'' As discussed earlier, the statute requires a royalty based on a percent of gross proceeds for commercial generation of electricity (§§ 1004(a)(A) and (B)). However, the statute does not expressly address non-commercial generation of electricity, such as electricity generated to run fans, pumps, lights, automatic valves, and instrumentation in direct use facilities. If electricity is not sold, there would be no gross proceeds upon which to base a royalty. BLM does not believe the intent of the Energy Policy Act of 2005 is to allow the use of Federal geothermal resources to generate non-commercial electricity without compensation. Therefore, as a permissible interpretation of the statute, BLM construes the non-commercial generation of electricity to be a direct use of the resource subject to the direct use fee schedule.

Proposed § 3211.19(a) would implement 30 U.S.C. 1004(a)(2) by setting the proposed royalty rate on byproducts listed in the first section of the Mineral Leasing Act (MLA), 30 U.S.C. 181 (*e.g.*, coal, phosphate, oil and gas, oil shale, sodium, sulfur, and potash) to be the same as the royalty rates in the Mineral Leasing Act and implementing regulations. The list of byproducts that would be included as examples in the proposed rule is not the complete list of minerals covered under the MLA because certain minerals, such as oil shale, would be physically impossible to produce as a byproduct.

In its amendments to 30 U.S.C. 1004, the Energy Policy Act of 2005 removed the language of previous 30 U.S.C. 1004(b) that established royalties of up to 5 percent for byproducts that are not listed in the Mineral Leasing Act, such

as gold, silver, zinc, etc. The removal of such text appears to create a gap in the statute. It is not clear whether Congress intended to establish such royalties at zero, or to leave it to the Secretary to set an appropriate royalty rate for such byproducts. Given the general policy established under section 102(a)(9) of the Federal Land Management and Policy Act, 43 U.S.C. 1701(a)(9), to receive fair market value for the use of the public lands and their resources, BLM believes it appropriate, and proposes in § 3211.19(b), to set a royalty rate of 5 percent of the gross proceeds from the sale of such byproduct, under the rulemaking authority of 30 U.S.C. 1023. The proposal would maintain the current royalty rate of 5 percent for such byproducts under 43 CFR 3211.10. BLM solicits comments on whether this rate is fair and based upon an acceptable interpretation of the statute.

Proposed § 3211.20 would provide that a lessee could credit advance royalty toward royalty due under proposed MMS regulations at 30 CFR 218.305(c). This provision, and the proposed MMS rule, would implement 30 U.S.C. 1004(f)(2) that allows for crediting advanced royalty payments towards royalty due on production.

Subpart 3212—Lease Suspensions and Royalty Rate Reductions

Proposed § 3212.10 would address the difference between a suspension of operations and production and a suspension of operations. Under proposed § 3212.10(a) a suspension of operations and production is a temporary relief from production obligations which a lessee may request from BLM.

The proposal would remove the basis listed in the current rule referring to economic conditions making it unjustifiable to continue operations. BLM believes that a lessee should not be able to hold a lease indefinitely merely because it is uneconomic to conduct operations. This would not promote the development and recovery of geothermal resources. In circumstances where geothermal operations would become economic, the new statute provides that a lessee that is subject to the new regulations could cease production and hold its lease through the payment of advanced royalty. (See proposed § 3212.15(a).) Under the statute, the payment of advanced royalties is limited to 10 years. Proposed § 3212.10(b) would explain that a suspension of operations is when BLM, on its own initiative, orders a lessee to temporarily stop production in the interest of conservation. The proposed regulatory text would more closely follow the statute at 30 U.S.C. 1010 than the existing regulation.

Proposed § 3212.11 would remain substantively unchanged except that the proposed rule would clarify that unit obligations could be separately suspended under proposed subpart 3287.

Proposed § 3212.12 would be similar to the existing section except that paragraph (b) would clarify that a lessee could not unilaterally terminate a suspension that BLM ordered. The reference to minimum royalties would also be removed.

Proposed § 3212.13 would be substantively similar to the existing rule except that during a suspension of operations, BLM could suspend lease or royalty obligations if BLM determined that a lessee would be denied all beneficial use of its lease during the period of the suspension.

Proposed § 3212.14 would remove the existing reference to minimum royalties and substitute the word ''terminate'' for the existing word ''cancel,'' because the remedy referred to should be a termination, not a cancellation.

Proposed § 3212.15 would address whether a lease can remain in full force and effect if a lessee ceases production and BLM does not grant a suspension. Proposed § 3212.15 would implement 30 U.S.C. 1004(f)(1) and (3). The intent of this proposed section is to allow temporary cessations of production, lasting more than a month, without lease termination and without a lessee having to apply for a suspension of operations and production.

Under this proposed rule BLM would not allow production stoppages of less than one full calendar month to be considered a cessation of production. BLM added this limitation for several reasons:

(1) Routine maintenance, such as plant overhauls, is an inherent part of producing a geothermal resource. While overhauls and other maintenance can last more than a month, most maintenance operations only require plant shut down for a period of days or weeks. Because maintenance is an inherent part of producing a geothermal resource, performing maintenance is still considered to be ''production.''

(2) From an administrative standpoint, tracking shutdowns lasting less than a month would be expensive and cumbersome. The reports that BLM receives are all based on calendar months. If a lease was shut down for an entire calendar month, the reports required by subpart 3270 would indicate zero production and this would flag BLM to consider implementing this section of the regulations. However, if a lease produced for part of a month, the reports would indicate some quantity of production. The only way BLM could determine if the lease was not producing for part of a month would be a physical inspection of the lease and a review of the metering records to determine when the lease was shut-in.

(3) If a lease produces for any portion of a month, royalty would be due. As long as a lessee is diligently producing from its lease, there is no need to collect a royalty on actual production for a portion of a month and an advance royalty for cessation of production for the remainder of the month. Proposed § 3212.15 would only apply if a lease is shut in for more than a calendar month.

Proposed § 3212.15 contains separate paragraphs, each of which would describe a set of circumstances under which a cessation of production could occur without lease termination. Proposed § 3212.15(a) would implement 30 U.S.C. 1004(f)(1) that allows the payment of advanced royalty in lieu of production. Under the proposed rule, once commercial production is achieved, a lessee would be allowed a total of 10 years with no production, without lease termination or having to apply for a suspension of operations, if the lessee continued to pay advanced royalty under proposed MMS regulations at 30 CFR 218.305. BLM has interpreted 30 U.S.C. 1004(f)(1) to allow a total of 120 months (10 years), whether consecutive or not. The benefits in paragraph (a) would not be available to leases subject to existing royalty provisions, *i.e.*, leases in effect before August 8, 2005, and leases issued after August 7, 2005 in response to applications pending on August 8, 2005, unless lessees of such leases elect to convert their royalty provisions under proposed §§ 3212.25 or 3200.8(b).

Because the statutory language is specific to leases on which royalty was previously paid, proposed § 3212.15(a) would not apply to direct use operations where the resource is not sold, because such users pay fees instead of royalties. Therefore, a lessee using the geothermal resource for seasonal operations in a greenhouse, for example, could not pay advanced royalties during the months of the year when no production occurs to maintain its lease in effect. However, if BLM approved the seasonal operations as part of the lessee's utilization plan, it would not be considered a cessation of production. If seasonal operations were not approved, the lessee would need a lease suspension to maintain the lease in effect.

For proposed § 3212.15(a), ''commercial production'' would be different from ''produced or utilized in

commercial quantities,'' because this section is not intended to apply to leases that have a well capable of production; it is only intended to apply to leases that are in actual production or are receiving allocated production through some type of agreement.

Proposed § 3212.15(b) specifies other circumstances that would allow leases to remain in full force and effect without having to pay advanced royalties if production ceases. This section would include situations when BLM: (1) Requires or causes the cessation of production; or (2) Determines that the cessation of production is required or otherwise caused by the Secretary of the Air Force, Army, or Navy; by a State or a political subdivision of a State; or by a force majeure. This section would implement 30 U.S.C. 1004(f)(3).

Proposed § 3212.15(c) would exempt lessees from having to pay advanced royalties during extended outages due to maintenance activities that are necessary to maintain operations. For this paragraph to apply, the maintenance would be required to last more than one calendar month and would require prior BLM approval. To approve such a request, the lessee would have to demonstrate to BLM's satisfaction that the cessation was part of required maintenance. The basis for this provision is that maintenance required to maintain operations is a production activity, not a cessation of operations. Required maintenance activities under this paragraph could include overhauling a power plant, re-drilling or re-working wells that are critical to plant operation, or repairing and improving gathering systems or transmission lines that necessitate the discontinuation of production.

Proposed § 3212.16 would replace existing § 3212.15 and provide the standards for reduction, suspension, or waiver of rental or royalties. It would be similar to the existing section but would more closely follow the statutory provision at 30 U.S.C. 1012.

Paragraph (b) would make clear that BLM would not approve a royalty reduction, suspension, or waiver unless all royalty interest owners other than the United States accept a similar reduction, suspension, or waiver. This provision is in existing regulations at § 3212.16(b).

Proposed § 3212.17 would specify the information that must be included with a request for a royalty or rental rate reduction, suspension, or waiver. It would include the information currently in § 3212.16, but clarify that all of the information must be submitted.

The Energy Policy Act of 2005 (at section 224(c) and (d)) establishes production incentives for new facilities and qualified expansion projects that are put into commercial operation by August 8, 2011. The incentives are in the form of a four-year, 50 percent reduction in royalty from what otherwise would be due. Proposed §§ 3212.18 through 3212.24, and proposed MMS regulations at 30 CFR 218.307, would implement these statutory provisions.

If a project is defined as a ''new facility,'' all of the production from that facility is subject to the 50 percent reduction in royalty that would otherwise be due. If a project is defined as a ''qualified expansion project,'' only the additional electricity generated as a result of the project is subject to the reduced royalty. Qualifying a project as a ''new facility'' would generally be more difficult and would typically result in more capital expenditure than an expansion project. Although a ''qualified expansion project'' may be easier to achieve, strict monthly production targets would be established that the project must meet in order to qualify.

Proposed § 3212.18 would provide a general description of the requirements for obtaining a production incentive. The production incentives would only be available for those leases that were issued before August 8, 2005, and that do not convert their royalty provisions under proposed § 3212.25. Because section 224(c) of the Energy Policy Act specifically refers to reductions in royalty, BLM has interpreted this to mean that the incentives are intended only for the commercial generation of electricity and not for direct use projects.

Proposed § 3212.19 would require lessees seeking a production incentive to submit a written request for a production incentive describing a project that may qualify as a new facility or qualified expansion project. Because each type of project offers specific benefits and restrictions for the lessee, the request would need to identify whether a lessee is requesting that the project be considered a new facility or a qualified expansion project, and to provide sufficient supporting information. In order to qualify for incentives under this paragraph, BLM must receive the request before August 7, 2011. Although the statute does not prescribe an application process, one clearly is needed. Because each project qualifying for a production incentive is unique, BLM would need sufficient information to determine the type of production incentive the applicant should receive (new facility or qualified expansion project). This determination would dictate the information that would need to be submitted and the requirements that the lessee would need to satisfy to receive the reduction in royalty.

BLM does not anticipate developing a specific application form; instead, the application could be in the form of a letter. The letter would provide a description of the project and whether the applicant prefers the project to be considered a new facility or a qualified expansion project. If the applicant is requesting the project to be considered as a new facility, the letter should include sufficient technical justification to support the general criteria set forth in § 3212.22. If the applicant is requesting the project to be considered as a qualified expansion project, the letter should describe the anticipated amount of capital expenditure per § 3212.21(a) and the estimated increase in net generation resulting from the project per § 3212.21(b). The letter should include sufficient technical detail to support these estimates.

Proposed § 3212.20 would describe how BLM would review a request for a production incentive. Under the proposal, BLM would review incentive requests on a case-by-case basis to determine whether a proposed project meets the criteria for a qualified expansion project under proposed § 3212.21 or a new facility under proposed § 3212.22 (see the discussions below of the criteria for qualified expansion projects and new facilities). If the request does not meet the criteria for the type of project the lessee requests, BLM would determine whether it meets the criteria for the other type of production incentive project.

Under proposed § 3212.20(b), if BLM determined that a lessee has a qualified expansion project, BLM would, as part of its approval, provide the lessee with a schedule of monthly target net generation amounts. These amounts would quantify the required 10 percent increase in net generation over the projected net generation without the project. The schedule would be specific to the facility or facilities that are affected by the project and would cover the 48-month time period during which the production incentive may apply. The lessee would receive the production incentive only for those months in which its net generation met the monthly target. BLM believes that averaging of production should not be allowed (see the preamble discussion of § 3212.23).

Proposed § 3212.21 would specify the criteria necessary to establish a qualified

expansion project for the purpose of obtaining a production incentive. Because one goal of the Energy Policy Act of 2005 is to encourage new projects that would increase the amount of electricity generated from geothermal resources, BLM would not approve projects for this incentive that do not involve significant capital expenditure. Specifically, BLM is concerned that a production incentive could be abused if a lessee simply opened production valves to achieve the required increase in generation. Examples of activities involving substantial capital expenditure could include: (1) The drilling of additional wells; (2) Retrofitting existing wells and collection systems to increase production rates; (3) Retrofitting turbines or power plant components to increase efficiency; (4) Adding additional generation capacity to existing plants; and (5) Enhanced recovery projects such as augmented injection. Projects that are not associated with substantial capital expenditure, such as opening production valves or operating existing equipment at higher rates, would not be considered to be qualified expansion projects.

While the Energy Policy Act of 2005 specifically refers to ''expansion of the facility'' in relation to qualified expansion projects, BLM has broadly interpreted this to mean the expansion of any portion of a geothermal project that would result in increased generation. This includes not only expansion to the power plant, but also projects in the well field, such as additional drilling, workovers, and enhanced geothermal projects such as augmented injection or acid and fracture stimulation.

In addition, the project would need to have the potential to increase the net generation by more than 10 percent over the projected generation without the project, using data from the previous 5 years. If 5 years of data were not available, it would not be considered to be a qualified expansion project. Under section 224(d) of the Energy Policy Act of 2005, a qualified expansion project must increase ''production'' by at least 10 percent over the production in the previous 5 years, taking into consideration production trends that occurred in those 5 years. BLM interpreted this provision to mean that if 5 years of data were not available, the project could not be classified as a qualified expansion project. In addition, BLM interprets the term ''production'' to mean ''net generation,'' because this would meet the intent of the statute to increase the amount of useable electricity from geothermal resources.

If a lessee were to satisfy the criteria for a qualified expansion project, BLM would perform a reservoir analysis of the 5 years of data that is submitted and, from that analysis, would develop a monthly schedule of target net generation amounts that would have to be met in order to qualify for a reduced royalty for that month. The lessee could perform its own reservoir analysis and develop a schedule of target generation amounts. However, BLM would review the analysis and could modify the schedule. Because the production incentive is only in effect for four years, the schedule would cover the 48-month period for which the production incentive may be applied.

Proposed § 3212.22 would identify criteria for determining whether a project qualified as a ''new facility.'' Because BLM does not have a formal definition for ''facility'' and because of the high degree of variation in projects, each application would be considered on a case-by-case basis based on the factors described in the rule. Listed factors in favor of concluding that a project qualifies as a new facility would include: (1) The project requires a new site license or facility construction permit if it is on Federal lands; (2) The project requires a new Commercial Use Permit; (3) The project includes at least one new turbine-generator unit; (4) The project involves a new sales contract; (5) The project involves a new or substantially larger footprint; or (6) The project is not contiguous to an existing project. Generally, a new facility would not be: (1) Authorized only with a Geothermal Drilling Permit; (2) Constructed entirely within the footprint of an existing facility; or (3) Involve only well field projects such as drilling new wells, increasing injection, and enhanced recovery projects.

If BLM determines that a proposed project could be approved either as a ''new facility'' or as ''qualified expansion project,'' BLM would approve the application under the category requested by the applicant. If a project would not qualify as a ''new facility'' BLM would automatically review it, with no action necessary on the applicant's part, to see if it would qualify as a ''qualified expansion project.''

Proposed § 3212.23 would describe how production incentives would apply to qualified expansion projects. The Energy Policy Act of 2005, at section 224(d), requires a production incentive to be granted if a qualified expansion project resulted in a 10 percent increase in production. However, that section of the Act is silent on how long the 10 percent increase would have to be maintained. BLM is concerned that a project could meet or exceed the target increase for a short period, yet obtain the production incentive for the entire allowable four year period. BLM believes the intent of the production incentive is to encourage projects that would result in a sustainable increase in production. Therefore, proposed § 3212.23 authorizes a reduced royalty only for those months where the qualified expansion project is meeting or exceeding the BLM-established net generation targets.

The Energy Policy Act of 2005, at section 224(c)(1)(b), requires the production incentive be applied to ''qualified expansion geothermal energy,'' which is further defined in section 224(d)(1) of the Energy Policy Act as being a ''production'' increase as a result of the expansion of the facility. BLM has interpreted this to mean that the reduced royalty only applies to the increase in net generation resulting from a qualified expansion project. To define the increase in net generation, proposed § 3212.23 would include an equation that uses the target generation amounts defined in proposed § 3212.20 as a basis. The denominator of the equation (1.1) converts the target generation amount to the baseline generation amount which represents the amount of electricity that would have been generated without the qualified expansion project.

To simplify the administration and tracking of the production incentives, the production incentive would take effect on the first day of the month following the commencement of commercial operation of the project, but only for those months where the net generation targets are met. The amount of the production incentive for qualified expansion projects would be established by the proposed MMS regulations.

Under Proposed § 3212.24, for projects that qualify as ''new facilities,'' the royalty on all the net generation from the facility would be reduced by 50 percent for the 48-month period following the commencement of commercial operation, regardless of the amount of electricity generated. To simplify the administration and tracking of the production incentives, the production incentive would take effect on the first day of the month following the commencement of commercial operation of the project. The amount of the production incentive for new facilities would be established by the proposed MMS regulations.

Proposed § 3212.25(a) would implement Section 224(e) of the Energy Policy Act of 2005, that allows lessees of geothermal leases issued before

August 8, 2005, to request that BLM modify their leases to convert the terms of their leases relating to the payment of royalties to the royalty and direct use fee terms in the Energy Policy Act of 2005. Proposed § 3212.25(a) would also provide that, if BLM modified the royalty terms of a lease, the new royalties and direct use fees would apply to all production from or allocated to that lease. Proposed § 3212.25(b) would reference proposed §§ 3211.17 and 3211.18 and applicable MMS rules for the specific royalty rates and direct use fees that would apply to a modified lease.

In implementing section 224(e) of the Energy Policy Act of 2005, BLM construes the statute to mean that the only royalty term of the lease that would be converted is the royalty rate on production from or allocated to the lease. Other lease and statutory terms exist, such as ''minimum royalty'' (existing § 3211.10) and ''advanced royalty'' during cessation of production (proposed § 3212.15), that BLM proposes not be converted.

For example, under the proposed rule, if the lessee of a lease issued prior to August 8, 2005, elected to convert the royalty terms of the lease under proposed § 3212.25, the lessee would be subject to the new royalty rate on gross proceeds for the commercial generation of electricity and direct use fee schedule for direct use operations. The lessee would, however, continue to be subject to the existing minimum royalty terms of their lease and not be required to pay rental once commercial production begins. In addition, the lessee would not be subject to paying advanced royalty if it ceased production for more than a calendar month.

This interpretation is based upon possible complications that could occur if some, but not all, of the other provisions changed. For example, under the Geothermal Steam Act, prior to the amendments made by the Energy Policy Act of 2005, rental on a lease was only due until the lease begins actual production or is deemed to have a well capable of production. At that point, the greater of actual royalty on production or minimum royalty is due every month. If BLM were to include the minimum royalty terms in the conversion under proposed § 3212.25, lessees electing to convert the royalty terms of their lease would no longer pay minimum royalty because there is no minimum royalty provision in the Energy Policy Act of 2005. But, once a lease had a well deemed capable of production, the rental commitments of the existing lease terms would end; therefore, unless the rental provisions of the new statute applied, the lessee would not pay rental or minimum royalty. BLM does not believe it was the intent of the Energy Policy Act of 2005 to allow lessees to hold a lease without making some type of payment. The Energy Policy Act of 2005 does not include provisions to change the rental terms of existing leases; only the royalty terms.

In addition, if lessees do not convert the requirement for minimum royalty payment under existing § 3211.10, requiring the payment of advanced royalties when production ceases for more than a calendar month would be burdensome and redundant. In cases where a lessee does not produce for a calendar month, the existing minimum royalty provisions require that minimum royalty be paid. BLM believes that Congress did not intend for more than one payment to be made if production ceases.

BLM believes that its proposal would be the simplest to administer. Requiring existing lessees who convert the royalty terms of their leases to eliminate minimum royalties without establishing new rental obligations and to pay advanced royalties in lieu of minimum royalties if production ceases, would be confusing and difficult to administer, and is not what Congress intended when it allowed existing lessees to convert royalty rates. Conversion of royalty rates only appears to be a straightforward way to implement the statute without imposing unnecessary complications. BLM is soliciting comments on this interpretation.

Section 224(e) of the Energy Policy Act of 2005 requires any lessee wishing to convert the royalty rate terms of its lease to apply to BLM. Proposed § 3212.26 would establish an application process and would require certain types of information to be submitted together with the application. For electrical generation, the lessee must submit enough information to allow BLM to determine how much royalty the lessee would have paid under the netback method, if that is the current method the lessee is using. As mentioned earlier, in situations where a lessee or its affiliate is selling geothermal resources at arm's length before those resources are used to generate electricity, the lessee would be required to document in its application that it has access to the purchaser's gross proceeds derived from the sale of the electricity. From the information contained in the application, BLM would calculate a new royalty rate that would result in the same amount of royalty.

Proposed § 3212.26(c) would state that BLM must receive an application to convert no later than 18 months following the effective date of the applicable final rule. For direct use operations, the applicable final rule is 30 CFR 206 (direct use fee schedule) and for the commercial generation of electricity, the applicable final rule is 43 CFR 3200 (lease royalty rates). This section would implement section 224(e)(2) of the Energy Policy Act of 2005. If both the MMS and BLM final rules were made effective on the same day, then all applications would have to be received by the same day, and the text of the final rule could be simplified.

Proposed § 3212.27 would implement section 224(e)(3) and (4) of the Energy Policy Act of 2005, and would also require BLM to consult with MMS in implementing the royalty conversion provision. BLM would also review an application to ensure that the lessee has suitable meters necessary to determine the royalty due under the modified lease terms.

Subpart 3213—Relinquishment, Termination, and Cancellation

Proposed §§ 3213.10 and 3213.11 relating to lease relinquishment would contain minor changes from the existing sections.

Proposed § 3213.12 relating to the minimum size of a remaining lease following a partial relinquishment would be amended to create an exception for direct use leases. The exception would be necessary because, under 30 U.S.C. 1003(g)(1), the size of direct use leases could easily be less than 640 acres.

Proposed § 3213.13 would contain some editorial changes. For the most part, it would be substantively unchanged from the existing regulation, although it would clarify that surface and other resources would need to be reclaimed as well as restored.

Proposed § 3213.14 would implement 30 U.S.C. 1004(g) regarding the termination of a lease for failure to pay rentals on time. This proposal would represent a substantial change from the procedures currently in place under existing §§ 3213.14 through 3213.20, which are based on statutory language that was removed by the Energy Policy Act of 2005. Under existing § 3213.14 (which implemented former 30 U.S.C. 1004(c)), failure to pay the full rental amount by the anniversary date of the lease results in automatic termination of the lease by operation of law. No grace period is provided for late payment. Existing § 3213.15 (which implemented a proviso in former 30 U.S.C. 1004(c)) provides that a lease will not terminate if MMS receives a timely rental payment that is deficient by a nominal amount.

Under the existing rule, MMS notifies the lessee of the nominal deficiency and provides a date by which a further payment must be paid. If the payment is not made in the time allowed, BLM terminates the lease as of the anniversary date of the lease. Existing §§ 3213.17, 3213.18, 3213.19, and 3213.20 contain a process for petitioning for lease reinstatement if a lease is terminated for failure to pay rent on time. The lessee has 30 days from receiving a termination notice to petition for lease reinstatement and must demonstrate that the failure to pay rent on time was justifiable or was not due to a lack of diligence. These regulatory provisions are also based on former 30 U.S.C. 1004(c). The Energy Policy Act of 2005 removed the provisions of 30 U.S.C. 1004(c) relating to lease termination, replacing them with the provisions of current 30 U.S.C. 1004(g), described below. The new statute contains no express process to petition for lease reinstatement.

Under the revised statute at 30 U.S.C. 1004(g)(1), a 45-day grace period beginning on the date of the failure to pay the rental (the lease anniversary date) is provided for a lessee to pay its rent in full before BLM will terminate a lease. The Secretary must terminate any lease with respect to which rental is not paid in full on the expiration of the 45-day period beginning on the date of the failure to pay the rental. Unlike the former statute, the new statute contains no exception for timely rental payments that are deficient by a nominal amount. The section provides further, at 30 U.S.C. 1004(g)(3), that a lease that would have otherwise terminated upon expiration of the 45-day period, will not terminate if the lessee pays to the Secretary, before the end of that period, the amount of rental due plus a late fee equal to 10 percent of the amount due. Proposed § 3213.14(a) would implement this statutory provision. This provision would also make clear that if MMS does not receive a lessee's rental plus the late fee by the end of the 45-day period described above, BLM will terminate the lease.

Under 30 U.S.C. 1004(g)(2), the Secretary is required to ''promptly'' notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the 45-day period referred to in 30 U.S.C. 1004(g)(1). MMS will provide this notification. The legislative intent of this paragraph appears to be that the Secretary should put a lessee on notice that it has a grace period to pay rental before its lease would be terminated for failure to pay. From a logistical standpoint, however, this legislative intent may be frustrated. For instance, it may take MMS a considerable amount of time to notify lessees that the lease anniversary date has passed and that MMS has not received the rental payment when it was due. If, for example, it were to take MMS 30 days to provide the required notification, a lessee would only have 15 days notice to pay within the 45-day timeframe required by paragraph (1) of the Act. As a further example, it is possible in certain circumstances that the MMS notification would not occur until after the expiration of the 45-day period, and after the BLM lease termination.

BLM is concerned that the practical difficulties with providing a lessee with adequate notice could lead to the unintended consequence of having leases terminate without the lessees being provided adequate notice to pay their overdue rental. Such an outcome would seem to be inconsistent with the requirement that the Secretary ''promptly'' notify the lessee of the unpaid rental. Proposed § 3213.14(b) would address this situation and provide a remedy that BLM believes would be consistent with Congressional intent. The proposed rule would ensure that lessees have at least 30 days notice to pay overdue rental in full. It would provide that if a lessee receives MMS notification of the non-payment of rental less than 30 days before the end of the 45-day period, the lessee will have a full 30 days from receipt of the notice to pay its rental in full. If MMS received the rent plus the 10 percent late fee within 30 days after the lessee received the notification, BLM would either not terminate the lease for non-payment of rental or would reinstate a lease that was terminated under proposed § 3213.14(a). In other words, every lessee would have no less than 30 days notice to either avoid a lease termination or to have its lease reinstated if it were terminated at the end of the 45-day period.

The statutory basis for proposed § 3213.14(b) is as follows: The statute does not expressly address the situation where, in practice, the ''prompt'' notification would compress the actual notice to a lessee to less than 30 days. The proposed rule would more fully implement the Congressional intent of providing adequate notice to a lessee. Moreover, under 30 U.S.C. 1023, the Secretary may prescribe regulations that it may deem appropriate to carry out the provisions of the Act, and may include, without limitation, rules to prevent waste, conserve geothermal resources, and protect the public interest. Proposed § 3213.14(b) would further all of these goals, and also implement congressional intent to provide a fair grace period to a lessee who fails to pay rent on time. Although not directly applicable, this proposal would be consistent with the intent of 30 U.S.C. 1011 that a lease not be terminated for any violation unless the lessee has 30 days notice to correct the violation.

Proposed § 3213.15 would carry forward the text of existing § 3213.16. Existing §§ 3213.15, 3213.17, 3213.18, 3213.19, and 3213.20 would be removed because they do not reflect the current statute.

Existing §§ 3213.21 and 3213.22, relating to lease expiration, would be removed because these matters would be covered in proposed subpart 3207, relating to terms and extensions of leases.

Proposed §§ 3213.16, 3213.17, 3213.18, and 3213.19 would clarify the provisions and terminology of existing §§ 3213.23, 3213.24, and 3213.25, relating to lease cancellation and termination. Lease cancellation would mean undoing the lease as if it never existed.

This would be covered by proposed § 3213.16 and limited to situations when BLM issued a lease in error.

In other circumstances, the existing rules use the term ''cancel'' when the appropriate term should be ''terminate.'' Thus, proposed § 3213.17 would describe situations where BLM could terminate (not cancel) a lease as of a particular date. Conforming changes would be made to other provisions of the proposed regulations by replacement of the word ''cancellation'' with the word ''termination.'' The rule would also clarify that it does not apply to non-payment of rent which, as explained above, would be covered by proposed § 3213.14. In response to a request by MMS, BLM would clarify in proposed § 3213.17 that among the bases for lease termination would be the nonpayment of royalties and fees under 30 CFR 206 and 218. This is not new in substance, but a reminder to lessees of the possible consequences of not making correct payments to MMS.

Proposed § 3213.19 would address circumstances where BLM notifies a lessee that its lease is being terminated because of a violation. It would clarify the procedures of existing § 3213.25 by specifying that a hearing may be requested in the context of the appeal of a proposed lease termination. It also would follow the statutory text of 30 U.S.C. 1011 in that a lessee could avoid lease termination by diligently proceeding to correct a violation, and that it is insufficient to make a good faith attempt to correct the violation without actually correcting it.

Subpart 3214—Personal and Surety Bonds and Subpart 3215—Bond Release, Termination, and Cancellation

Both proposed and existing subparts 3214 and 3215 address bonding of geothermal operations. Most sections of the proposed subparts would be substantively unchanged from their existing counterparts. Changes have been proposed to clarify terminology, and improve grammar and readability. The proposed substantive changes are discussed.

In proposed § 3214.14(b), we propose that the bond may be increased to reclaim the surface and other resources. The existing rule does not expressly include ''other resources.''

In proposed § 3214.18, the title would be clarified to match the content of the section. Proposed § 3214.18(b) would clarify that reclamation responsibilities extend to resources other than the surface, and proposed § 3214.18(d) would expressly mention royalties as well as rents.

Proposed § 3215.13 would be reorganized for clarity. It would also clarify that even after bond termination, a surety and any other bond provider remains responsible for obligations that accrued during the period of liability while a bond was in effect.

Subpart 3216—Transfers

Existing subpart 3216 addresses geothermal lease transfers. The proposed subpart would almost entirely be substantively unchanged from the existing subpart. Changes have been proposed to clarify terminology, and improve grammar and readability. Proposed section § 3216.14 would be changed to indicate that the filing fees for transfers are now found in § 3000.12 of the chapter.

Proposed § 3216.19 would recognize that direct use leases have different size constraints than regular geothermal leases. Thus, the proposed section relating to the size of allowable lease transfers would contain an exception for direct use leases.

Subpart 3217—Cooperative Agreements

Existing subpart 3217 addresses cooperative agreements. The proposed subpart would have few substantive changes from the existing subpart. Changes have been proposed to clarify terminology, and improve grammar and readability.

Subpart 3217 describes two types of cooperative agreements, unit and communitization agreements, and addresses the requirements of Federal lessees who join with others to conserve the geothermal resource under communitization agreements. The Energy Policy Act of 2005, at 30 U.S.C. 1017(e) specifically authorizes the pooling of land under communitization agreements in order to develop geothermal resources where operators cannot successfully develop tracts independently. BLM cannot approve these agreements unless BLM determines them to be in the public interest.

Proposed § 3217.10, describing unit agreements, would be revised to more closely follow the statutory language at 30 U.S.C. 1017(a). The term ''cooperative plan'' would be removed from the existing § 3217.10 because the agency does not require approval of a cooperative plan and does not use that term in a regulatory context.

Sections 3217.11 through 3217.13 are substantively unchanged from existing regulations.

The term ''operating contracts'' would be removed from proposed §§ 3217.14 and 3217.15, leaving the statutory terms ''drilling contract'' and ''development contract,'' both of which appear in 30 U.S.C. 1017(g). BLM uses the terms ''drilling contract'' and ''development contract'' interchangeably to describe the agreement parties use to cooperatively explore under a communitization agreement. Proposed § 3217.14(b) would include reference to regional exploration, which typically describes the scope of drilling or development contracts. This section has also been revised to make it clear that drilling or development contracts are limited to exploration activities. Proposed § 3217.14(c) would be added to acknowledge current BLM practice of coordinating the review of a proposed drilling or development contract with the appropriate State agencies. Section 3217.14(d) would be changed to more accurately reflect a provision of the Energy Policy Act that requires BLM to determine that approval of a drilling or development contract best serves or is necessary for the conservation of natural resources, public convenience or necessity, or the interests of the United States.

Subpart 3250—Exploration Operations—General; Subpart 3251—Exploration Operations: Getting BLM Approval; Subpart 3252—Conducting Exploration Operations; Subpart 3253—Reports: Exploration Operations; Subpart 3254—Inspection, Enforcement, and Noncompliance for Exploration Operations; Subpart 3255—Confidential, Proprietary Information; and Subpart 3256—Exploration Operations Relief and Appeals

Subparts 3250 through 3256 contain provisions regulating geothermal exploration of Federal lands. Proposed changes to these subparts would clarify existing terminology and procedures and make the subparts more readable.

Several changes are proposed throughout these subparts to clarify that an approved Notice of Intent to Conduct Geothermal Resource Exploration Operations would be equivalent to a permit. In most cases the terms ''Notice of Intent'' or ''Notice of Intent to Conduct Geothermal Resource Exploration Operations'' would be substituted for the terms ''exploration permit'' or ''permit.''

Proposed § 3250.10 is substantively unchanged from existing regulations.

Proposed § 3250.11, addressing the general question related to where exploration can occur, would be moved from existing § 3251.11 of the subpart addressing exploration approval. This would necessitate the renumbering of subpart 3251.

Proposed §§ 3250.12 and 3250.13 are substantively unchanged from existing regulations. The content of proposed new § 3250.14 would be taken from existing § 3250.11. This proposed reorganization would provide a more logical sequence of general questions related to the regulation of exploration operations.

There would be no substantive changes to §§ 3251.10–15. As mentioned previously, the content of existing § 3251.11 would be moved to proposed § 3250.11 and the remaining sections would be renumbered to correspond to proposed §§ 3251.10–14.

Proposed § 3251.15(b) would revise existing § 3251.16(b) to ensure that bond release could not occur unless operators not only have reclaimed the land surface, but also, if necessary, resolved other environmental, cultural, scenic, or recreational issues. Reclamation includes resolving the impacts of geothermal exploration activities on resource values in addition to reclamation of the land.

There are no substantive changes proposed in subparts 3252 through 3256.

Subpart 3260—Geothermal Drilling Operations—General; Subpart 3261—Drilling Operations: Getting a Permit; Subpart 3262—Conducting Drilling Operations; Subpart 3263—Well Abandonment; Subpart 3264—Reports-Drilling Operations; Subpart 3265–Inspection, Enforcement, and Noncompliance for Drilling Operations; Subpart 3266—Confidential, Proprietary Information; and Subpart 3267—Geothermal Drilling Operations Relief and Appeals

Subparts 3260 through 3267 establish permitting and operations procedures for drilling and testing geothermal wells as well as producing or injecting geothermal resources. These subparts also address other types of geothermal well operations. No substantive changes are proposed to these subparts. Changes have been proposed to clarify terminology, and improve grammar and readability.

Subpart 3270—Utilization of Geothermal Resources—General; Subpart 3271—Utilization Operations: Getting a Permit; Subpart 3272—Utilization Plan and Facility Construction Permit; Subpart 3273—How to Apply for a Site License; Subpart 3274—Applying for and Obtaining a Commercial Use Permit; Subpart 3275—Conducting Utilization Operations; Subpart 3276—Reports: Utilization Operations; Subpart 3277—Inspections, Enforcement, and Noncompliance; Subpart 3278—Confidential, Proprietary Information; and Subpart 3279—Utilization Relief and Appeals

The regulations in subparts 3270 through 3279 address the permitting and operating requirements for the utilization of geothermal resources. Except as referenced below, no other substantive changes are proposed to these subparts. Changes have been proposed to clarify terminology, and improve grammar and readability.

Proposed § 3275.14 would be amended in one respect. The current requirement to measure the temperature out of a facility (current § 3275.14(c)(3)) would be removed because this information would no longer be needed for the valuation of direct use operations using the MMS fee schedules. For ''no-sales'' situations, leases issued under the Energy Policy Act and leases converting to the new royalty terms under §§ 3212.25 or 3200.8 would no longer have to calculate the amount of heat displaced by the geothermal resource. Instead, they would use a direct use fee schedule that is based only on inlet temperature and the monthly volume or mass produced. In developing the direct use fee schedule, MMS assumed a fixed outlet temperature of 130 °F, which greatly simplifies the metering system and the calculations.

For situations involving the arms-length sale of geothermal resources to a direct use facility and for leases issued under the previous royalty terms which do not convert to the new royalty terms, both of which BLM believes will be relatively rare, proposed § 3275.14(d) would give BLM the authority to require outlet temperature recorders on a case-by-case basis, if needed.

Proposed § 3276.14 would eliminate the requirements of existing § 3276.14(a) to report a daily breakdown of flow, average temperature in, and average temperature out. The information requirements in existing sections § 3276.14(d) and (e) would also be eliminated. The purpose of the data was to allow the calculation and verification of thermal energy displaced, which is the basis of valuation in the existing MMS regulations. For leases issued under the Energy Policy Act and for existing leases that convert to the new royalty terms of the Energy Policy Act under §§ 3212.25 or 3200.8, direct use operations would now be valued using the MMS fee schedule which determines fees due as a function of inlet temperature and monthly volume or mass produced. Therefore, collection of the data would no longer be necessary.

For situations where the resource is sold under an arm's length contract for use in a direct use facility and for leases issued with the previous royalty terms that do not convert to the royalty terms of the Energy Policy Act, the daily breakdown of flow, average temperature in, and average temperature out may still be required. However, BLM believes these situations will be relatively rare and can be handled on a case by case basis under § 3276.14(d).

Part 3280—Geothermal Resources Unit Agreements

This proposed rule would revise existing part 3280 to implement the Energy Policy Act of 2005 relating to unit agreements, specifically 30 U.S.C. 1017. Additionally, the regulations in part 3280 have not been updated since the 1970s, other than to add the unit review requirement mandated by a 1988 amendment to the Geothermal Steam Act. Therefore, other additions to the proposed rule would be included to provide needed procedural requirements related to unit agreement administration. These changes and additions are intended to clarify BLM's expanded authority regarding unitization as provided under the Energy Policy Act of 2005, the unit operator's application and operational requirements, and to identify how BLM would review an application and make necessary unit agreement administration decisions, given the manner in which geothermal resources are developed. Changes would include provisions specifying that BLM could require: (1) The formation of a unit agreement; (2) Existing Federal leases to commit to a unit agreement; (3) New leases to contain a provision requiring the lessee to agree to commit to a unit agreement if BLM so requires; (4) A modification of the rate of resource exploration or development within a unit; and (5) Establishing that a majority interest of owners in a lease has the authority to commit the lease to a unit agreement. Other changes in this proposal do not change existing procedure or practice, but clarify and articulate unit agreement requirements. These provisions include: (1) Setting out the application procedures for unit area designations and the unit agreements, in the order each step typically occurs; (2) Identifying BLM's procedures for reviewing applications and making final decisions regarding unit area designations, unit agreements, and participating areas; (3) Explaining BLM procedures for administering a unit agreement once it is in effect; (4) Specifying how a unit operator could receive BLM approval to modify unit terms, especially those related to unit contraction; and (5) Establishing minimum initial and continuing unit development requirements and conditions for terminating the unit agreement. In effect, the proposed provisions would standardize existing practices, assure consistent BLM procedures, and would inform the public as to how BLM handles unit agreements.

Subpart 3280—Geothermal Resources Unit Agreements: General

Proposed § 3280.1 would explain that the purpose and scope of part 3280 is to provide holders of Federal and non-Federal geothermal leases and owners of non-Federal mineral interests the opportunity to unite under a Federal geothermal unit agreement to explore for and develop geothermal resources in a manner meeting the public interest.

The existing authority, § 3280.0–3, would be removed as unnecessary. The authority citation for the part follows the Table of Contents for part 3280, and the discussion of functions within the Interior Department is covered by the Department of the Interior Departmental Manual and delegations to BLM.

Proposed § 3280.2 would include definitions from existing § 3280.0–5, with certain revisions. Unnecessary definitions of terms such as ''agreement'' and ''cooperative agreement'' would be removed. Several definitions would be added, including definitions for the terms ''unit contraction provision,'' ''plan of development,'' ''public interest,'' ''reasonably proven to produce'' and ''unit well.''

BLM's policy regarding the formation of units that is set forth in existing § 3280.0–2 would be revised and included in proposed § 3280.3. The new section would set forth the policy contained in 30 U.S.C. 1017(a) that for the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal reservoir, field, or like area, is subject to any unit agreement), lessees thereof and their representatives could unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if determined and certified by BLM to be necessary or advisable in the public interest.

Proposed § 3280.4 would address BLM's authority to require the formation of a unit agreement and BLM's authority to require leases to be committed to a unit agreement and would implement 30 U.S.C. 1017(a)(3) and (b). Proposed § 3280.4(a) would provide that BLM could initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if it was in the public interest. This implements a statutory provision and does not require the consent of a lessee. Modification of lease terms to facilitate creation and operation of the unit does require lessee consent, however (30 U.S.C. 1017(a)(4) and proposed § 3280.5). Proposed § 3280.4(b) would state that BLM could require that leases becoming effective on or after August 8, 2005, contain a provision stating that BLM could require commitment of the lease to a unit agreement. Under this provision BLM could also prescribe the unit agreement to which such lease would be required to commit in order to protect the rights of all parties in interest, including the United States. This provision implements 30 U.S.C. 1017(b)(2).

As mentioned above, proposed § 3280.5 would provide that BLM could, with the consent of the lessees involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases and make conditions with respect to the leases, with the consent of the lessees, in connection with the creation and operation of any such unit agreement as the BLM could consider necessary or advisable to secure the protection of the public interest. This would implement 30 U.S.C. 1017(a)(4)(A). The proposal would also provide that if leases to be included in a unit have unlike lease terms, the leases will not be required to be modified to be in the same unit. This would implement 30 U.S.C. 1017(a)(4)(B).

Proposed § 3280.6 would provide that BLM could require a unit agreement that applies to lands owned by the United States to contain a provision under which BLM or an entity designated in the unit agreement could alter or modify, from time to time, the rate of resource exploration, development, or production quantity or rate under the unit agreement. This proposed section would implement 30 U.S.C. 1017(c).

Proposed § 3280.7 would clarify that BLM cannot require lands which are not under Federal administration.

Subpart 3281—Application, Review, and Approval of a Unit Agreement

Proposed subpart 3281 would reorganize the application, review, and decision procedures for unit area designation and the unit agreement into a sequential, step-by-step, description. The proposed regulations would describe in detail the steps to follow and the information a prospective unit operator would have to submit, as well as the process BLM would follow to make application decisions. The first step would be for BLM to make a designation of the proposed unit area.

Proposed § 3281.1 would make clear that before a unit agreement is effective, BLM must designate the unit area and approve the unit agreement.

Proposed § 3281.2 would provide a list of information that the unit operator must submit before BLM can make a unit area designation. The prospective unit operator would be required to submit a geologic report, a map of the proposed unit area, a list of leases and tracts located in the proposed unit area and any other information BLM requires.

Proposed § 3281.3 would provide more detail on the types of geologic information the unit operator should provide to document that the proposed unit area is geologically contiguous and suitable for exploration, development, and production of the resource.

Proposed § 3281.4 would make it clear that proposed unit areas are not required to be of a specific size or shape, but the size could require the drilling of more than one unit well to meet minimum initial unit obligations.

Proposed § 3281.5 would explain how BLM would resolve unit applications that contain overlapping areas. If separate unit applications overlap, BLM could: (1) Approve the unit application designation which best meets public interest requirements; (2) Designate a different unit area; or (3) Require revision of the applications. BLM would not approve any proposed unit agreement if it included lands committed to another unit agreement already in effect.

Proposed § 3281.6 would describe how BLM would determine whether to approve unit designation and how BLM will notify operators of the decision. Among other considerations, BLM would determine if the geologic basis for the unit area is sound for the development of the unit area, which is the principal factor in deciding whether the unit area would be designated.

Under the proposal, if BLM approves a unit area designation, the prospective unit operator would initiate the steps required for unit agreement approval. Proposed § 3281.7 describes the information a unit operator must submit to BLM for unit agreement approval.

Consistent with existing regulations at § 3281.3, the prospective unit operator would be required to provide an opportunity for all owners of mineral rights and lease interests to join the unit under proposed § 3281.8 and then supply BLM with documentation of the commitment status of each lease or tract as required by proposed § 3281.9. Documentation would include a signed joinder agreement or evidence the interest owners were offered an opportunity to join the unit. Under 30 U.S.C. 1017(a)(2) and § 3281.9(b), a majority interest of owners in a lease could commit the lease to a unit agreement.

Proposed § 3281.10 explains that BLM would review the commitment status documentation to insure that the prospective unit operator will have sufficient control of the unit area to conduct resource development in the public interest.

Proposed § 3281.11 would address the required qualifications of a prospective unit operator. The qualification requirements for unit operators have not changed. This is consistent with existing § 3282.1.

Proposed § 3281.12 would explain that owners of mineral rights and lease interest committed to the unit are the

parties who nominate a unit operator; however, BLM must determine if the nominee meets the qualifications before the unit operator is designated.

Proposed § 3281.13 would address the formats or models for unit agreements. This section would allow a unit applicant the flexibility to create a unit agreement that best matches the specific development scenario or energy market conditions in an area. The prospective unit operator could use the model unit agreement proposed in § 3286.1, the model with variances noted, or another format that meets the requirements outlined in the next two proposed regulatory sections. While existing regulations at § 3281.1 allow for variances from a model unit agreement, the proposed regulations clearly describe the information that needs to be in a unit agreement should the applicant choose not to use the model agreement.

Proposed § 3281.14 is new to these regulations. The addition of § 3281.14 does not change existing procedures related to the required provisions in a unit agreement. Existing regulations required the unit applicant to determine the minimum requirements of a unit agreement by following the model agreement. Listing the minimum requirements and terms for unit agreement should assist applicants in determining what terms and conditions are required in a unit agreement.

Proposed § 3281.15 would list the minimum initial unit obligation information that the unit agreement must contain. To meet the minimum initial unit obligation, the unit operator would have to diligently drill and complete at least one unit well. The information required by this section will be used to ensure that the well would be: (1) Located on a tract committed to the agreement; (2) Drilled to the depth or geologic formation specified in the unit agreement, unless commercial resources are found at a shallower depth; and (3) Completed within the time frame specified in the unit agreement. Depending on the size of the unit, BLM could require the drilling of more than one unit well to meet the minimum initial unit obligation. Since the unit well, by definition, would have to be designed to produce or utilize resources in commercial quantities, the completion of a narrow diameter well could satisfy the initial obligation only if the well is capable of production in commercial quantities. BLM would make this determination on a case-by-case basis. Other exploration operations, such as drilling temperature gradient wells, could also be used to satisfy part of the minimum initial unit obligation.

Proposed § 3281.16 would clarify existing practice to submit Plans of Development for the unit at the time of unit designation, and for future activities not addressed in an existing Plan of Development. Plans of Development must be submitted to BLM for future unit activities until after a producible unit well is completed.

Proposed § 3281.17 would describe the information that a unit operator must include in a Plan of Development. While the scope and types of activities described in the Plan of Development may vary, a Plan of Development must include the completion of at least one unit well.

Proposed § 3281.18 would make it clear that BLM will not designate a unit area until the Plan of Development ensures that unit activities will meet the public interest requirements.

Proposed § 3281.19 would discuss BLM's response to a proposed unit agreement. In all instances, BLM's review of a proposed unit agreement must conclude that approval of the unit complies with these regulations and is in the public interest. This section of the proposed rule also requires BLM to coordinate the review of a proposed unit agreement with appropriate State and other Federal surface management agencies. This is consistent with current practice. Under this section BLM would provide the applicant with written notification of unit rejection or approval.

Proposed § 3281.20 would establish the effective date of an agreement as the first day of the month following BLM approval. The unit operator would have the option of requesting the effective date be the first day of the month in which BLM approved the agreement, or a more appropriate date if agreed to by BLM.

Subpart 3282—Participating Area

Proposed subpart 3282 would define several procedural requirements regarding participating areas.

Section 3282.1 of the proposed rule would define a participating area as those portions of the unit area BLM determines: (1) Are reasonably proven to produce in commercial quantities; or (2) Support production in commercial quantities such as through pressure support from injection wells.

Proposed § 3282.2 would explain that commercial operations cannot begin without BLM approval of a participating area. This is necessary to ensure proper allocation of production and royalties within the unit.

Proposed § 3282.3 would specify that a unit operator would have to propose a participating area the earlier of 30 days before starting commercial operation, or 60 days after BLM determined a well is produced or utilized in commercial quantities.

Proposed § 3282.4 would describe the general information (*e.g.*, maps showing all tracts and lease information) that the unit operator must submit to BLM when applying for a participating area.

Proposed § 3282.5 would describe the technical information (*e.g.*, interpretations of well performance and geology documenting the tracts contributing to production) that the unit operator must submit to BLM when applying for a participating area.

Proposed § 3282.6 would specify the circumstances requiring a unit operator to apply to revise a participating area boundary. This proposed section would also allow unit operators to request a delay in modifying participating area boundaries when active drilling is not complete.

Information on the establishment of an effective date for new or revised participating areas would be in proposed § 3282.7. Provisions in this section would provide flexibility in establishing the effective date, provided the date is not earlier than the effective date of the unit agreement.

Proposed § 3282.8 would outline the following as the three reasons BLM would reject revision of a participating area: (1) If the unit operator does not supply the required information; (2) If the information does not support approval; or (3) If the proposed revision reduces the size of the participating area because of resource depletion in a certain area. The third reason is included as a matter of equity because a lessee should not lose the benefit of unitization if its resources are utilized before other resources in the participating area. To provide otherwise would serve as a disincentive to having a lease's resources developed early in the life of a participating area.

Proposed § 3282.9 would provide that production be allocated equally to all lands in a participating area which are committed to the unit agreement. For instance, if you owned or controlled full interest in 100 acres within a participating area of 1000 acres, you would be allocated 10 percent of the production from the participating area.

Proposed § 3282.10 would specify that unleased Federal lands, which are available for leasing and located within the participating area, would receive a proportionate allocation of production for royalty purposes. The unit operator would pay royalty to the United States on these lands. This section further provides that if BLM is not allowed to lease the unleased Federal lands in the

participating area because of restrictions based on planning decisions or other statutory requirements, the lands will not receive an allocation of production (see § 3201.11).

Proposed § 3282.11 would explain that BLM may determine that a participating area could continue where only intermittent production is occurring, provided such a determination is in the public interest. The regulations describe direct use facilities that only utilize geothermal resources during winter months as an example of intermittent production that BLM would consider in the public interest.

Proposed § 3282.12 would provide that a participating area would terminate when the unit operator either permanently stops commercial operations, or 60 days after receiving notification from BLM that operations are not being conducted in accordance with the unit agreement, participating area approval, or the public interest. If the unit operator can demonstrate that BLM's reason for termination is in error or the situation warranting the termination has been rectified, BLM may decide to not terminate the participating area.

Subpart 3283—Modifications to the Unit Agreement

Proposed subpart 3283 would establish how modifications to a unit agreement could be proposed and approved. This proposed rule would add new provisions to specify the conditions under which a unit operator could request an extension of the unit contraction date and/or a partial contraction of the unit area. Providing this flexibility for unit administration decisions by BLM is necessary since a unit operator could have spent substantial amounts of money discovering commercial resources which can not be immediately developed due to conditions beyond the operator's control. An inability to place portions of a unit into production could subject leases to termination where either commercial resources could have been found or monitoring or injection wells not directly involved in production are located. This would reduce the incentive for additional exploration and development in the unit area, which is contrary to public interest objectives.

Proposed § 3283.1 would provide that a unit operator could request a modification of the unit agreements after all unit interests have agreed to the change in the agreement. After review, BLM will notify the unit operator of BLM's decision and effective date of approval, if applicable.

Proposed § 3283.2 would discuss circumstances under which the unit operator could request BLM to revise contraction provisions of a unit agreement. Contraction provisions of a unit agreement describe how lands will be removed from the unit agreement as exploration and development activities determine which lands are not capable of producing geothermal resources in commercial quantities. Under this section, an operator could also propose an extension of the unit contraction date and/or a partial contraction of the unit area. This section outlines both the information the operator must provide and information the operator should provide to BLM in support of a request to revise contraction provisions of the unit area. BLM would approve the request if we determine that revision was in the public interest. BLM may also add conditions to the approval such as requiring an annual renewal or setting the timing and conditions for when phased contractions or termination of the revision could occur.

Proposed § 3283.4 would address adding or removing lands from an agreement when BLM determines, based on information submitted by the unit operator, that new or additional geologic information modifies the basis for the unit boundary. Once BLM notifies the unit operator of approval of the revision to the unit, the unit operator must notify all interest owners in the unit area revision.

Proposed § 3283.5 would implement 30 U.S.C. 1017(f) that requires review of unit agreements at 5 year intervals to eliminate any lands in the unit area not necessary for unit operations.

Proposed § 3283.6 would describe the purpose of the periodic review, the basis for eliminating lands from the unit, and the consequences of elimination on leased lands.

Proposed § 3283.7 would provide that unit operators may be changed only with BLM's written approval.

Proposed § 3283.8 would describe the requirements of the new operator. The new operator must meet the qualification requirements, submit evidence of adequate bonding for Federal lands, and provide written acceptance of the unit terms and conditions to BLM.

Proposed § 3283.9 would provide that the change of unit operator is effective when BLM approves the new operator in writing.

Proposed § 3283.10 would explain that the previous unit operator would remain responsible for all duties and responsibilities until BLM approved the new unit operator. This section also makes it clear that previous unit operators remain responsible for liabilities and obligations that accrued before a new unit operator was approved.

Proposed § 3283.11 would acknowledge that a unit agreement does not modify stipulations in Federal leases. While certain lease provisions, such as lease term, annual work requirements, and royalty provisions are altered by commitment of lands to a unit, lease stipulations, such as those designed to protect the environment or other resources, are not superseded by the terms of a unit agreement.

Proposed § 3283.12 would stipulate that persons acquiring Federal interests in a unit agreement are bound by the terms and conditions of the unit agreement.

Subpart 3284—Unit Operations

Proposed subpart 3284 would discuss unit operations, unit operator responsibilities for those operations, and how BLM would administer operational situations.

Proposed § 3284.1 would acknowledge current practice that all phases of unit operations would be required to comply with the terms and conditions of the unit agreement and operational standards and orders identified in the exploration (subpart 3250), drilling (subpart 3260), and production and utilization (subpart 3270) subparts of this rule.

Responsibilities of the unit operator would be described in proposed § 3284.2. In general, the unit operator has primary responsibility to diligently explore and drill for, and to produce and inject, unitized geothermal resources. A separate entity could own and operate utilization facilities located within the unit area, but only the unit operator would be authorized to produce and inject unitized resources and supply geothermal resources to any utilization facilities, regardless of whether the location of such facilities is within the unit. Other working interests would not be authorized to conduct any drilling activities under subpart 3260 on leases committed to a unit agreement without BLM approval. The unit operator works with BLM and MMS to make unit changes and must ensure all monies owed to the Federal government for geothermal activities are paid.

Proposed § 3284.3 would discuss what happens to the unit agreement and leases committed to the agreement if the minimum initial unit obligations were not met and how unit operations could affect extension of lease terms. If the initial unit well obligations were not

met or the unit operator relinquished the agreement before meeting the initial unit obligations, the agreement would be voided as if it was never in effect, and any lease segregations become invalid and any extensions issued would be retroactively voided to the date the unit became effective.

Proposed § 3284.4 would address actions necessary to maintain a unit agreement after a unit well has been completed. If a unit well is determined by BLM to be producible, the unit operator must submit a proposed participating area application and if no additional wells are drilled, the unit area will contract to conform to the participating area. If a unit well will not produce or utilize geothermal resources in commercial quantities, the unit operator would have to continue drilling unit wells within the time specified in the agreement until unit well is completed which BLM determines produces or utilizes geothermal resources in commercial quantities. Failure to meet this obligation to drill subsequent wells would result in the unit terminating at that time.

Proposed § 3284.5 would explain how commitment of lands to a unit agreement affects lease terms. Lease extensions granted based on commitment to the agreement would remain in force while the unit is in effect. Under proposed § 3207.17, a lease could receive an extension if it was committed to a unit agreement and would expire prior to the unit term expiring. If the unit operator has diligently pursued unit development, a lease could receive an extension to match the term of the unit.

Proposed § 3284.6 would address drilling by working interest owners other than the unit operator. BLM may approve drilling outside the participating area only when BLM determines the unit operator is not diligently developing the resource and drilling is in the public interest. Should a working interest owner complete a well which would produce or utilize in commercial quantities, the unit operator must apply to include the well in the participating area and operate the well.

Proposed § 3284.7 would allow a lessee or operator to conduct operations on an uncommitted Federal lease located within a unit if BLM determined that it was in the public interest and would not unnecessarily affect unit operations.

Proposed § 3284.8 would establish that a unit can only have one operator. Given the nature of most geothermal resources, multiple unit operators would likely violate the purpose of the unit agreement that all of the resources within the unit be developed as if they were part of one operation. If multiple operators were allowed, then they could separately develop the resource, the resource would not necessarily be conserved, and the public interest would not be served. In effect, the purpose of having a unit would be defeated.

Proposed § 3284.9 would allow BLM to set or modify the rate of production or injection within the unit area to ensure protection of Federal resources.

Proposed § 3284.10 would articulate the unit operator's responsibility to prevent drainage of the unit area and ensure compensation (royalties) for drainage of geothermal resources from unitized land by wells not subject to the unit agreement.

Proposed § 3284.11 would explain that development and production from the unit, regardless of location within the unit, fulfills the diligent development requirements for all leases within the unit.

Proposed § 3284.12 would require unit operators to notify BLM within 30 days of a change in the commitment status of any lease or tract within the unit, regardless of ownership.

Subpart 3285—Unit Termination

Unit agreement termination is discussed in proposed subpart 3285.

Proposed § 3285.1 would provide that BLM may terminate a unit agreement if the unit operator does not comply with any term or condition of the unit agreement.

Proposed § 3285.2 would allow a unit operator to request BLM approval of a voluntary unit agreement termination after the initial unit obligation well is completed and before starting commercial operations. This could occur when the appropriate percentage of working interest owners, as specified in the unit operating agreement, agree to the termination. If commercial operations are occurring, the unit would remain in effect until all commercial operations cease.

Subpart 3286—Model Unit Agreement

Subpart 3286 provides a model unit agreement. Applicants for unit agreements are not required to use this model (see proposed § 3281.13).

This rule proposes several revisions to Articles IV and XI of the model unit agreement. In these Articles, the existing model refers to a Plan of Operation. The term Plan of Development would be used in the proposed model to replace the Plan of Operation. This change is proposed to clarify overall permit application requirements since a Plan of Operation is part of the well drilling and testing application (§§ 3261.11 and 3261.12), and is not related to the review of a unit agreement. The requirements of the Plan of Development would not be substantially changed from those of the existing Plan of Operation.

Article IV of the existing unit model requires the unit to contract to the participating area if no more than 4 months could elapse between the establishment of the participating area and completing the drilling of an exploratory well outside of the participating area. This time frame is proposed to be expanded to 6 months before contraction would occur to provide the unit operator with greater flexibility when attempting to obtain drilling equipment.

We are proposing several modifications to existing Article XI. A unit operator is currently required to initiate drilling an exploratory well within six months of the effective date of the unit agreement. This rule would modify this requirement to allow the unit operator to conduct exploration operations as well as drilling a well to meet unit diligent development requirements. A unit operator would have to complete at least one unit exploration well prior to the end of the term of the unit agreement or the unit would be voided and leases would not receive any benefit of unit commitment. Article XI of the existing model agreement specifies that BLM could only grant a single extension of drilling obligations of no longer than four months. We are proposing to modify the model so that BLM could grant multiple extensions of time frames that meet public interest requirements. This greater flexibility in unit administration is needed to cover a wide variety of development issues facing unit operators that are beyond their control. Language in Articles 11.5 and 11.7 referring to the ''actual production of unitized substances'' would be changed to ''completing a well capable of producing or utilizing unitized substances in commercial quantities.'' This change would allow the minimum initial unit obligation to be met either through the timely completion of a producible unit well or the initiation of actual production of unitized resources.

We are also proposing editorial revisions to the model agreement. For instance, references to the ''Director'' are changed to the ''Authorized Officer,'' the person within BLM with the authority to make final decisions.

We are proposing to delete the following sections in this part because the BLM does not require submission of

information in these formats and the information contained in these sections is found elsewhere in the proposed rule: § 3286.1–1 Model Exhibit ''A''; § 3286.1–2 Model Exhibit ''B''; § 3286.2 Model unit bond; § 3286.3 Model designation of successor operator; and § 3286.4 Model change of operator by assignment.

Subpart 3287—Relief and Appeals

This subpart addresses situations where unit operators seek relief from the obligations of the unit agreement and wish to appeal a BLM decision under this part.

Proposed § 3287.1 would allow a unit operator to request a suspension of any or all obligations under the unit agreement.

Proposed § 3287.2 would list the circumstances that may warrant the granting of a suspension of unit obligations. Typically they are situations beyond the unit operator's control, such as accidents, labor strikes or Acts of God. Under this provision, BLM could decide to not grant a suspension of unit obligations, especially the minimum initial obligation, when lengthy or indefinite periods of time are involved. For example, BLM might not approve a suspension of minimum initial drilling obligations due to a unit operator's inability to obtain an electrical sales contract or when poor economics affect the electrical generation market, limiting the opportunity to obtain viable sales contracts.

Proposed § 3287.3 would describe how a suspension of unit obligations would affect the terms of the unit agreement. This section explains that BLM has the discretion to toll certain provisions of the unit agreement while allowing others to remain in effect. BLM will specify the terms of the suspension. The unit operator is obligated to notify all interests in the agreement of changes in unit agreement obligations effected by the suspension.

Proposed § 3287.4 would allow a unit operator to appeal decisions BLM makes regarding unit agreement administration or operations.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, the Unfunded Mandates Reform Act (UMRA), and the Small Business and Regulatory Flexibility Act (SBRFA) require agencies to undertake an analysis of the benefits and costs associated with the regulatory action.

The proposed regulations are intended to implement provisions of the Energy Policy Act related to geothermal leasing. Those provisions in the Act are primarily intended to promote the exploration and development of geothermal resources on Federal lands.

The annual effect on the economy of the regulatory changes is less than $100 million and they will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. The regulatory changes in the nomination and leasing process, royalty system, and diligence requirements are the only provisions in the proposed rule with potential economic impacts. However, the royalty provisions are intended to be revenue neutral and should not have any economic impact. The nomination filing fee added in section 3203.12 is $100 per nomination for competitive sale, plus 10 cents for each acre of land nominated. This fee will have some negative financial impact on lessees. However, BLM is authorized to charge reasonable filing fees under Section 304(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1734(a). While our general policy is to charge a processing fee that recovers the agency's reasonable processing costs, BLM does not have data on our cost of processing nominations. In 2004, BLM issued 29 competitive and noncompetitive geothermal leases, covering 45,706 acres. With the proposed fees, the cost of acquiring those leases would have been increased by $2,900 due to the fixed nomination fee, and $4,570.60 due to the per acre fee, or an average of a little over $250 per lease. This nominal filing fee is not intended to reimburse the government for its processing costs, but instead to limit filings to serious applicants. We do not expect the fee to lead to any reduction in the number of serious applicants. Therefore, we do not anticipate any measurable reduction in economic activity due to the proposed regulations, and certainly nothing approaching $100 million annually.

The payment-in-lieu-of-expenditure provision would increase the cost of holding future non-producing Federal geothermal leases beyond the 15th year. However, since these leases are neither producing nor being actively developed, we do not expect any measurable reduction in economic activity to occur as a result of the proposed rule.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the geothermal program with other agencies' actions, and we coordinated closely with the Minerals Management Service in preparing this proposed rule. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

This rule does not materially affect the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example ''§ 3251.10 Do I need a permit before I start my exploration operations?'' (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed rule has no direct effect on BLM environmental activities and decisions. It deals primarily with changes in the leasing procedures and royalty provisions of the existing regulations. The rule would not change operational standards to cause impacts on the ground. Therefore, an environmental impact statement is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the administrative

record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Public Comment Procedures section, above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

Entities that will be directly affected by this Geothermal Resource Leasing rule will include most, if not all, firms involved in the exploration and development of geothermal resources on Federal lands. Such operators are a subset of entities involved in the domestic geothermal industry.

The U.S. Census Bureau does not identify the geothermal industry as a discrete industrial classification. Instead, firms involved in exploration and development of geothermal resources are included within other categories. For example, geothermal drilling is grouped with water well drilling; firms involved in the distribution of steam are included with steam and air-conditioning suppliers; and firms generating electricity from geothermal resources are grouped in an Other Electric Power Generation category. As a result, there is no practical way to use the U.S. Census Data to calculate the number of entities involved in the domestic geothermal industry.

As of September 30, 2004, there were 259 noncompetitive leases covering 364,506 acres in Arizona, California, Idaho, Nevada, Oregon, and Utah. Almost 300,000 of those acres are located in Nevada. There were also 140 competitive leases covering 186,683 acres in California, Nevada, New Mexico, Oregon and Utah. Approximately 170,000 of those leased acres are located in California and Nevada.

Although this rule will only affect entities involved in the exploration and development of energy and mineral resources from land administered by BLM, there is no practical way to determine which of these firms will operate on Federal lands in the future. The extent to which any firm is actually affected by this rule depends on whether it operates on Federal lands.

For firms involved in the geothermal industry, small entities are defined by the SBA as individuals, limited partnerships, or small companies considered at ''arm's length'' from the control of any parent companies, with fewer than 500 employees.

U.S. Census data on firms by number of employees is not available. However, based on interviews of BLM specialists involved in geothermal leasing activity and several industry representatives, and reviews of company reports, there appears to be only one known firm currently operating on Federal lands with more than 500 employees. That firm, Calpine Corporation, operates The Geysers in northern California, and is a major power company that owns, leases, and operates natural gas-fired and geothermal power plants.

Based on available information, the preponderance of firms involved in geothermal resource exploration and development on Federal lands are small entities as defined by SBA. Therefore, it is reasonable to conclude that this rule will affect a ''substantial number of small entities.''

The regulatory changes in the nomination and leasing process, royalty system, and diligence requirements are the only provisions in the proposed rule with potential economic impacts. However, the royalty provisions are intended to be revenue neutral and should not have any economic impact. The nomination filing fee in section 3203.12 is $100 per nomination, plus 10 cents for each acre of land nominated for competitive sale. This fee will have a negative financial impact on lessees, including small entities.

BLM is authorized to charge reasonable filing fees under Section 304(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1734(a). While our general policy is to charge a processing fee that recovers the agency's reasonable processing cost, BLM does not have data on our cost of processing nominations. In 2004, BLM issued 29 competitive and noncompetitive geothermal leases, covering 45,706 acres. With the proposed fees, the cost of acquiring those leases would have been increased by $2,900 due to the fixed nomination fee, and $4,570.60 due to the per acre fee, or an average of about $250 per lease. This nominal filing fee is not intended to reimburse the government for its processing costs, but instead to limit filings to serious applicants. We do not expect the fee to lead to any reduction in the number of serious applicants. Therefore, we do not anticipate any measurable reduction in economic activity due to the proposed regulations.

The annual effect on the economy of the regulatory changes is less than $100 million, as shown earlier in this section, and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency, also as discussed earlier. This rule does not change the relationships of the geothermal program with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule. In addition, this rule does not materially affect the budgetary impacts of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities. The determination and findings discussed herein are supported by a Threshold Analysis prepared under the RFA. BLM has place the Threshold Analysis on file in the administrative record at the address specified in the **ADDRESSES** section.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. See the discussion under Executive Order 12866, above.

Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on state, local, or Tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this proposed rule has a significant or unique effect on state, local, or Tribal governments. The rule would impose no requirements on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that the change proposed in this rule would not

have effects approaching $100 million per year on the private sector. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule is not a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required, since the proposed rule does not authorize any specific activities that would result in any effects on private property. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule would not have federalism implications. The rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the levels of government. It would not apply to states or local governments or state or local governmental entities. The management of Federal geothermal leases is the responsibility of the Secretary of the Interior. The proposed rule would not alter any lease management or revenue sharing provisions with the states, nor does it impose any costs to the states. Therefore a federalism assessment is not required.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this rule may include policies that have tribal implications. The proposed rule would make changes in the Federal geothermal leasing and management program, which does not apply on Indian Tribal lands. At present, there are no geothermal leases or agreements on Tribal or allotted Indian lands. If the Bureau of Indian Affairs should ever issue any leases or agreements, BLM would then likely be responsible for the approval of any such proposed operations on all Indian (except Osage) geothermal leases and agreements. In light of this possibility, and because Tribal interests could be implicated in geothermal leasing on Federal lands, BLM has begun consultation on the proposed revisions to the geothermal regulations and will continue to consult with Tribes during the comment period on the proposed rule.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM has determined that the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed changes could result in an increase in geothermal leasing and development, but any potential increases are only speculative. If geothermal leasing and development did increase, that would likely have a positive effect on energy supply.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, BLM has determined that this proposed rule would not impede facilitating cooperative conservation; would take appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provide that the programs, projects, and activities are consistent with protecting public health and safety. The proposed changes are essentially administrative in nature and would have a bearing on conservation issues.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains a collection of information that has been submitted to OMB for review and approval under section 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, BLM invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, you may send your comment directly to OMB and a copy to BLM (see the **ADDRESSES** section of this notice). You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer Contact at (202) 452–5033.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BLM on the proposed regulations.

The title of the collection of information for the rule is ''43 CFR Parts 3200 and 3280, Geothermal Resource Leasing and Geothermal Resources Unit Agreements.'' We estimate the respondents to include 79 geothermal lessees who may apply for lease conversions and lease extensions (50 lease conversions and 29 lease extensions). Responses to this collection are required to obtain a benefit.

The collection of information required by the current parts 43 CFR 3200 and 3280 regulations is approved under OMB Control Numbers 1004–0074 (expiration 9/30/06) and 1004–0132 (expiration 3/31/07). The proposed rule imposes changes to the information collection burden hours (see table below). This rulemaking will make an estimated increase of 2,040 new burden hours. The hour burden and responses remain the same for those collections, and therefore, those numbers are not included in the total reporting burden of this rulemaking.

43 CFR proposed section	Reporting requirement	Hour burden	Annual number of responses	Annual burden hours
3200.7(a)(2)	Notify BLM of request to convert the existing lease or determine whether lessee qualifies for a two-year extension of its term.	1	79	79
3203.10	Submit nominations for geothermal lease sale and required fees from section 3203.12..	3.5	300	1,050
3203.12	Submit the required fees (see section 3203.10)	15 min.	300	75
3205.10	Submit application for a direct use lease	10	10	100
3212.10	Submit application for production incentive	16	20	320
3212.26	Submit application to convert royalty terms of leases issued before August 8, 2005 to the terms of the Energy Policy Act of 2005.			
	(a) Leases with existing electrical generation projects	4	31	124
	(b) Leases with existing direct use operations	1	2	2
	(c) Leases without electrical generations or direct use operations.	1	50	50
3276.14	Submit monthly report for direct use facilities	12 (1 hour each month).	20	240
Total			812	2,040

The BLM specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary and useful for BLM to properly perform its functions?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

Authors

The principal authors of this proposed rule are Rich Hoops—BLM Nevada State Office, Richard Estabrook—BLM Ukiah Field Office, Cheryl Seath—BLM Bishop Field Office, Sean Hagerty—BLM California State Office, and assisted by Brenda Aird of the Assistant Secretary's Office, Kermit Witherbee—National Geothermal Program Manager, BLM's Division of Regulatory Affairs, and the Office of the Solicitor.

List of Subjects

43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Water resources.

43 CFR Part 3280

Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, for the reasons stated in the preamble and under the authorities stated below, BLM proposes to amend 43 CFR parts 3200 and 3280 as follows:

R.M. "Johnnie" Burton,

Director, Minerals Management Service, Exercising the Delegated Authority of the Assistant Secretary, Land and Minerals Management.

1. Revise part 3200 to read as follows:

PART 3200—GEOTHERMAL RESOURCE LEASING

Subpart 3200—Geothermal Resource Leasing

Subpart 3201—Available Lands

Subpart 3202—Lessee Qualifications

Subpart 3203—Competitive Leasing

Subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases

Subpart 3205—Direct Use Leasing

Authority: 30 U.S.C. 1001–1028; 43 U.S.C. 1701 *et seq.*; and Pub. L. 109–58.

Subpart 3200—Geothermal Resource Leasing

§ 3200.1 Definitions.

For purposes of this part and part 3280 of this chapter:

Acquired lands means lands or mineral estates that the United States obtained by deed through purchase, gift, condemnation or other legal process.

Act means the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*).

Additional extension means the period of years added to the primary term of a lease beyond the first 10 years and subsequent 5-year initial extension of a geothermal lease. The additional extension may not exceed 5 years.

Byproducts are minerals (exclusive of oil, hydrocarbon gas, and helium), found in solution or in association with geothermal steam, that no person would extract and produce by themselves because they are worth less than 75 percent of the value of the geothermal steam or because extraction and production would be too difficult.

Casual use means activities that ordinarily lead to no significant disturbance of Federal lands, resources, or improvements.

Commercial operation means delivering Federal geothermal resources, or electricity or other benefits derived from those resources, for sale. This term also includes delivering resources to the

utilization point, if you are utilizing Federal geothermal resources for your own benefit and not selling energy to another entity.

Commercial production means production of geothermal resources when the economic benefits from the production are greater than the cost of production.

Commercial production or generation of electricity means generation of electricity that is sold or is subject to sale, including the electricity or energy that is required to convert geothermal energy into electrical energy for sale.

Commercial quantities means either:

(1) For production from a lease, a sufficient volume (in terms of flow and temperature) of the resource to provide a reasonable return after you meet all costs of production; or

(2) For production from a unit, a sufficient volume (in terms of flow and temperature) of the resource to provide a reasonable return after you meet all costs of drilling and production.

Commercial use permit means BLM authorization for commercially operating a utilization facility and/or utilizing Federal geothermal resources.

Development or drilling contract means a BLM-approved agreement between one or more lessees and one or more entities that makes resource exploration more efficient and protects the public interest.

Direct use means utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production or generation of electricity. Direct use may occur under either a regular geothermal lease or a direct use lease.

Direct use lease means a lease issued in an area BLM designates as available exclusively for direct use of geothermal resources, without sale, for purposes other than commercial generation of electricity.

Exploration operations means any activity relating to the search for evidence of geothermal resources, where you are physically present on the land and your activities may cause damage to those lands. Exploration operations include, but are not limited to, geophysical operations, drilling temperature gradient wells, drilling holes used for explosive charges for seismic exploration, core drilling or any other drilling method, provided the well is not used for geothermal resource production. It also includes related construction of roads and trails, and cross-country transit by vehicles over public land. Exploration operations do not include the direct testing of geothermal resources or the production or utilization of geothermal resources.

Facility construction permit means BLM permission to build and test a utilization facility.

Facility operator means the person receiving BLM authorization to site, construct, test, and/or operate a utilization facility. A facility operator may be a lessee, a unit operator, or a third party.

Geothermal drilling permit means BLM written permission to drill for and test Federal geothermal resources.

Geothermal exploration permit means BLM written permission to conduct only geothermal exploration operations and associated surface disturbance activities under an approved Notice of Intent to Conduct Geothermal Resource Exploration Operations, and includes any necessary conditions BLM imposes.

Geothermal resources operational order means a formal, numbered order, issued by BLM, that implements or enforces the regulations in this part.

Geothermal steam and associated geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproducts.

Gross proceeds means gross proceeds as defined by the Minerals Management Service at 30 CFR 206.351.

Initial extension means a period of years, no longer than 5 years, added to the primary term of a geothermal lease beyond the first 10 years of the lease, provided certain lease obligations are met.

Interest means ownership in a lease of all or a portion of the record title or operating rights.

Known geothermal resource area (KGRA) means an area where BLM determines that persons knowledgeable in geothermal development would spend money to develop geothermal resources.

Lessee means a person holding record title interest in a geothermal lease issued by BLM.

MMS means the Minerals Management Service of the Department of the Interior.

Notice to Lessees (NTL) means a written notice issued by BLM that implements the regulations in this part, part 3280 of this chapter, or geothermal resource operational orders, and provides more specific instructions on geothermal issues within a state, district or field office. Notices to Lessees may be obtained by contacting the BLM State Office that issued the NTL.

Operating rights (working interest) means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operating rights owner means a person who holds operating rights in a lease. A lessee is an operating rights owner if the lessee did not transfer all of its operating rights. An operator may or may not own operating rights.

Operations plan, or plan of operations means a plan which fully describes the location of proposed drill pad, access roads and other facilities related to the drilling and testing of Federal geothermal resources, and includes measures for environmental and other resources protection and mitigation.

Operator means any person who has taken responsibility in writing for the operations conducted on leased lands.

Person means an individual, firm, corporation, association, partnership, trust, municipality, consortium, or joint venture.

Primary term means the first 10 years of a lease, not including any periods of suspension.

Produced or utilized in commercial quantities means the completion of a well that:

(1) Produces geothermal resources in commercial quantities; or

(2) Is capable of producing geothermal resources in commercial quantities so long as BLM determines that diligent efforts are being made toward the utilization of the geothermal resource.

Public lands means the same as defined in 43 U.S.C. 1702(e).

Record title means legal ownership of a geothermal lease established in BLM's records.

Relinquishment means the lessee's voluntary action to end the lease in whole or in part.

Secretary means the Secretary of the Interior or the Secretary's delegate.

Site license means BLM's written authorization to site a utilization facility on leased Federal lands.

Stipulation means additional conditions BLM attaches to a lease or permit.

Sublease means the lessee's conveyance of its interests in a lease to an operating rights owner. A sublessee is responsible for complying with all terms, conditions, and stipulations of the lease.

Subsequent well operations are those operations done to a well after it has been drilled. Examples of subsequent well operations include: Cleaning the well out, surveying it, performing well tests, chemical stimulation, running a

liner or another casing string, repairing existing casing, or converting the well from a producer to an injector or vice versa.

Sundry notice is your written request to perform work not covered by another type of permit, or to change operations in your previously approved permit.

Surface management agency means any Federal agency, other than BLM, that is responsible for managing the surface overlying Federally-owned minerals.

Temperature gradient well means a well authorized under a geothermal exploration permit drilled in order to obtain information on the change in temperature over the depth of the well.

Transfer means any conveyance of an interest in a lease by assignment, sublease, or otherwise.

Unit agreement means an agreement to explore for, produce and utilize separately-owned interests in geothermal resources as a single consolidated unit. A unit agreement defines how costs and benefits will be allocated among the holders of interest in the unit area.

Unit area means all tracts committed to an approved unit agreement.

Unit operator means the person who has stated in writing to BLM that the interest owners of the committed leases have designated it as operator of the unit area.

Unitized substances means geothermal resources recovered from lands committed to a unit agreement.

Utilization Plan or plan of utilization means a plan which fully describes the utilization facility, including measures for environmental protection and mitigation.

Waste means:

(1) Physical waste, including refuse; or

(2) Improper use or unnecessary dissipation of geothermal resources through inefficient drilling, production, transmission, or utilization.

§ 3200.3 Changes in agency duties.

There are many leases and agreements currently in effect, and that will remain in effect, involving Federal geothermal resources leases that specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements may also specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. Those references must now be read to mean either the Bureau of Land Management or the Minerals Management Service, as appropriate. In addition, many leases and agreements specifically refer to 30 CFR part 270 or a specific section of that part. Effective December 3, 1982, references in such leases and agreements to 30 CFR part 270 should be read as references to this part 3200, which is the successor regulation to 30 CFR part 270.

§ 3200.4 What requirements must I comply with when taking any actions or conducting any operations under this part?

When you are taking any actions or conducting any operations under this part, you must comply with:

(a) The Act and the regulations of this part;

(b) Geothermal resource operational orders;

(c) Notices to lessees;

(d) Lease terms and stipulations;

(e) Approved plans and permits;

(f) Conditions of approval;

(g) Verbal orders from BLM that will be confirmed in writing;

(h) Other instructions from BLM; and

(i) Any other applicable laws and regulations.

§ 3200.5 What are my rights of appeal?

(a) If you are adversely affected by a BLM decision under this part, you may appeal that decision under parts 4 and 1840 of this title.

(b) All BLM decisions or approvals under this part are immediately effective and remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

§ 3200.6 What types of geothermal leases will BLM issue?

BLM will issue two types of geothermal leases:

(a) Geothermal leases (competitively issued under subpart 3203 of this part or noncompetitively issued under subpart 3204 of this part) which may be used for any type of geothermal use, such as commercial generation of electricity or direct use of the resource.

(b) Direct use leases (issued under subpart 3205 of this part).

§ 3200.7 What regulations apply to geothermal leases in effect on August 8, 2005?

(a) *General applicability.* (1) Leases in effect on August 8, 2005, are subject to this part and part 3280 of this chapter, except that such leases are subject to the BLM regulations in effect on August 8, 2005, with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals.

(2) The lessee of a lease in effect on August 8, 2005, may elect to be subject to all of the regulations in this part and part 3280 of this chapter, without regard to the exceptions in paragraph (a)(1) of this section. Such an election must occur no later than 18 months after [Effective Date of Final Rule]. Any such election as it pertains to lease terms relating to royalties must be made under the royalty conversion provisions of subpart 3212 of this part.

(b) *Royalty conversion and production incentives.* The lessee of a lease in effect on August 8, 2005, may:

(1) Choose to convert lease terms relating to royalties under subpart 3212 of this part; or

(2) If it does not convert lease terms relating to royalties, apply for a production incentive under subpart 3212 of this part (if eligible under that subpart).

(c) *Two year extension.* The lessee of a lease in effect on August 8, 2005, may apply to extend a lease that was within two years of the end of its term on August 8, 2005, for up to two years to allow achievement of production under the lease or to allow the lease to be included in a producing unit.

§ 3200.8 What regulations apply to leases issued in response to applications pending on August 8, 2005?

(a) Any leases issued in response to applications that were pending on August 8, 2005, are subject to this part and part 3280, except that such leases are subject to the BLM regulations in effect on August 8, 2005, with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals.

(b)(1) The lessee of a lease issued pursuant to an application that was pending on August 8, 2005, may elect to be subject to all of the regulations in this part and part 3280, without regard to the exceptions in paragraph (a) of this section.

(2) For leases issued after August 8, 2005, and before [Effective Date of Final Rule], an election under paragraph (b)(1) of this section must occur no later than 18 months after [Effective Date of Final Rule].

(3) For leases issued on or after [Effective Date of Final Rule], the lease applicant must make its election under paragraph (b)(1) of this section and notify BLM before the lease is issued.

Subpart 3201—Available Lands

§ 3201.10 What lands are available for geothermal leasing?

(a) BLM may issue leases on:

(1) Lands administered by the Department of the Interior, including public, withdrawn and acquired lands;

(2) Lands administered by the Department of Agriculture with its concurrence;

(3) Lands conveyed by the United States where the geothermal resources were reserved to the United States; and

(4) Lands subject to Section 24 of the Federal Power Act, as amended (16 U.S.C. 818), with the concurrence of the Secretary of Energy.

(b) If your activities under your lease or permit might adversely affect a significant thermal feature of a National Park System unit, BLM will include stipulations to protect this thermal feature in your lease or permit. These stipulations will be added, if necessary, when your lease or permit is issued, extended, renewed or modified.

§ 3201.11 What lands are not available for geothermal leasing?

BLM will not issue leases for:

(a) Lands where the Secretary has determined that issuing the lease would cause unnecessary or undue degradation of public lands and resources;

(b) Lands contained within a unit of the National Park System, or otherwise administered by the National Park Service;

(c) Lands within a National Recreation Area;

(d) Lands where the Secretary determines after notice and comment that geothermal operations, including exploration, development or utilization of lands, are reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System;

(e) Fish hatcheries or wildlife management areas administered by the Secretary;

(f) Indian trust or restricted lands within or outside the boundaries of Indian reservations;

(g) The Island Park Geothermal Area; and

(h) Lands where Section 43 of the Mineral Leasing Act (30 U.S.C. 226–3) prohibits geothermal leasing, including:

(1) Wilderness areas or wilderness study areas administered by BLM or other surface management agencies;

(2) Lands designated by Congress as wilderness study areas, except where the statute designating the study area specifically allows leasing to continue; and

(3) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or are released to uses other than wilderness by an Act of Congress.

Subpart 3202—Lessee Qualifications

§ 3202.10 Who may hold a geothermal lease?

You may hold a geothermal lease if you are:

(a) A United States citizen who is at least 18 years old;

(b) An association of United States citizens, including a partnership;

(c) A corporation organized under the laws of the United States, any state or the District of Columbia; or

(d) A domestic governmental unit.

§ 3202.11 Must I prove I am qualified to hold a lease when filing an application to lease?

You do not need to submit proof that you are qualified to hold a lease under § 3202.10 at the time you submit an application to lease, but BLM may ask you in writing for information about your qualifications at any time. You must submit the additional information to BLM within 30 days after you receive the request.

§ 3202.12 Are other persons allowed to act on my behalf to file an application to lease?

Another person may act on your behalf to file an application to lease. The person acting for you must be qualified to hold a lease under § 3202.10, and must do the following:

(a) Sign the application;

(b) State his or her title;

(c) Identify you as the person he or she is acting for; and

(d) Provide written proof of his or her qualifications and authority to take such action, if BLM requests it.

§ 3202.13 What happens if the applicant dies before the lease is issued?

If the applicant dies before the lease is issued, BLM will issue the lease to either the administrator or executor of the estate or the heirs. If the heirs are minors, BLM will issue the lease to either a legal guardian or trustee, provided that the legal guardian or trustee is qualified to hold a lease under § 3202.10.

Subpart 3203—Competitive Leasing

§ 3203.5 What is the general process for obtaining a geothermal lease?

(a) The competitive geothermal leasing process consists of the following steps:

(1) Entities interested in geothermal development nominate lands by submitting to BLM descriptions of lands they seek to be included in a lease sale.

(2) BLM provides notice of the parcels to be offered, and the time, location, and process for participating in the lease sale.

(3) BLM holds the lease sale and issues leases to the successful bidder.

(b) BLM will issue geothermal leases to the highest responsible qualified bidder after a competitive leasing process, except for situations covered by subparts 3204 and 3205 of this part, which include:

(1) Lease applications pending on August 8, 2005;

(2) Lands for which no bid was received in a competitive lease sale;

(3) Direct use lease applications for which no competitive interest exists; and

(4) Lands subject to mining claims.

§ 3203.10 How do I request lands for competitive sale?

(a) A qualified company or individual must nominate lands for competitive sale by submitting an applicable BLM nomination form.

(b) A nomination is a description of lands that you seek to be included in one lease. Each nomination may not exceed 5,120 acres, unless the area to be leased includes an irregular subdivision. Your nomination must provide a description of the lands nominated by legal land description.

(1) For lands surveyed under the public land rectangular survey system, describe the lands to the nearest aliquot part within the legal subdivision, section, township, and range;

(2) For unsurveyed lands, describe the lands by metes and bounds, giving courses and distances, and tie this information to an official corner of the public land surveys, or to a prominent topographic feature;

(3) For approved protracted surveys, include an entire section, township, and range. Do not divide protracted sections into aliquot parts;

(4) For unsurveyed lands in Louisiana and Alaska that have water boundaries, discuss the description with BLM before submission; and

(5) For fractional interest lands, identify the United States mineral ownership by percentage.

(c) You may submit more than one nomination, as long as each nomination separately satisfies the requirements of paragraph (b) of this section and includes the filing fee specified in § 3203.12.

(d) BLM may reconfigure lands to be included in each parcel offered for sale.

§ 3203.11 How do I request that nominations be offered as a block for competitive sale?

(a) As part of your nomination, you may request that lands be offered as a block at competitive sale by:

(1) Specifying that the lands requested will be associated with a project or unit: and

(2) Including information to support your request.

(b) BLM may offer parcels as a block only if information is available to BLM indicating that a geothermal resource that could be produced as one unit can reasonably be expected to underlie such parcels. BLM may request that you provide additional information.

§ 3203.12 What fees must I pay to nominate lands?

Submit with your nomination a filing fee for nominations of lands of $100 per nomination plus 10 cents per acre of lands nominated, as found in the fee schedule in § 3000.12 of this chapter.

§ 3203.13 How often will BLM hold a competitive lease sale?

BLM will hold a competitive lease sale at least once every 2 years for lands available for leasing in a state that has nominations pending. A sale may include lands in more than one state.

§ 3203.14 How will BLM provide notice of a competitive lease sale?

(a) The lands available for competitive lease sale under this subpart will be described in a Notice of Competitive Geothermal Lease Sale, which will include:

(1) The lease sale format and procedures;

(2) The time, date, and place of the lease sale; and

(3) Stipulations applicable to each parcel.

(b) At least 45 days before conducting a competitive lease sale, BLM will post the Notice in the BLM office having jurisdiction over the lands to be offered, and make it available for posting to surface managing agencies having jurisdiction over any of the included lands.

(c) BLM may take other measures of notification for the competitive sale such as:

(1) Issuing news releases;

(2) Notifying interested parties of the lease sale;

(3) Publishing notice in the newspaper; or

(4) Posting the list of parcels on the Internet.

§ 3203.15 How does BLM conduct a competitive lease sale?

(a) BLM will offer parcels for competitive bidding as specified in the sale notice.

(b) The winning bid will be the highest bid by a qualified bidder.

(c) You may not withdraw a bid. Your bid constitutes a legally binding commitment by you.

(d) BLM will reject all bids and re-offer a parcel if:

(1) BLM determines that the high bidder is not qualified; or

(2) The high bidder fails to make all payments required under § 3203.17.

§ 3203.17 How must I make payments if I am the successful bidder?

(a) You must make payments by personal check, cashier's check, certified check, bank draft, or money order payable to the ''Department of the Interior—Bureau of Land Management'' or by other means deemed acceptable by BLM.

(b) By the close of official business hours on the day of the sale or such other time as BLM may specify, you must submit for each parcel:

(1) Twenty percent of the bid;

(2) The total amount of the first year's rental; and

(3) The processing fee for competitive lease applications found in the fee schedule in § 3000.12 of this chapter.

(c) Within 15 calendar days after the last day of the sale, you must submit the balance of the bid to the BLM office conducting the sale.

(d) If you fail to make all payments required under this section, or fail to meet the qualifications in § 3202.10, BLM will revoke acceptance of your bid and keep all money that has been submitted.

§ 3203.18 What happens to parcels that receive no bids at a competitive lease sale?

Lands offered at a competitive lease sale that receive no bids will be available for leasing in accordance with subpart 3204 of this part.

Subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases

§ 3204.5 How can I obtain a noncompetitive lease?

(a) Lands offered at a competitive lease sale that receive no bids will be available for noncompetitive leasing for a 2-year period beginning the first business day following the sale.

(b) You may obtain a noncompetitive lease for lands available exclusively for direct use of geothermal resources, under subpart 3205 of this part.

(c) The holder of a mining claim may obtain a noncompetitive lease for lands subject to the mining claim, under § 3204.12.

(d) If your lease application was pending on August 8, 2005, you may obtain a noncompetitive lease under the leasing process in effect on that date, unless you notify BLM in writing that you elect for the lease application to be subject to the leasing process specified in this subpart. If you elect for your lease application to be subject to the leasing process in this subpart, your application will be considered a nomination for future competitive sale offerings for the lands in your application.

§ 3204.10 What payment must I submit with my noncompetitive lease application?

Submit the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter for each lease application, and an advance rent in the amount of $1 per acre (or fraction of an acre). BLM will refund the advance rent if we reject the lease application or if you withdraw the lease application before BLM accepts it. If the advance rental payment you send is less than 90 percent of the correct amount, BLM will reject the lease application.

§ 3204.11 How may I acquire a noncompetitive lease for lands that were not sold at a competitive lease sale?

(a) For a two-year period following a competitive lease sale, you may file a noncompetitive lease application for lands on which no bids were received, on a form available from BLM. Submit 2 executed copies of the applicable form to BLM. At least one form must have an original signature. We will accept only exact copies of the form on one 2-sided page.

(1) For 30 days after the competitive geothermal lease sale, noncompetitive applications will be accepted only for parcels as configured in the Notice of Competitive Geothermal Lease Sale.

(2) Subsequent to the 30-day period specified in paragraph (a)(1) of this section, you may file a noncompetitive application for any available lands covered by the competitive lease sale.

(b)(1) All applications for a particular parcel under this section will be considered simultaneously filed if received in the proper BLM office any time during the first business day following the competitive lease sale. You may submit only one application per parcel. An application will not be available for public inspection the day it is filed. BLM will randomly select an application among those accepted on the first business day to receive a lease offer.

(2) Subsequent to the first business day following the competitive lease sale, the first qualified applicant to submit an application will be offered the lease. If BLM receives simultaneous applications as to date and time for overlapping lands, BLM will randomly select one to receive a lease offer.

§ 3204.12 How may I acquire a noncompetitive lease for lands subject to a mining claim?

If you hold a mining claim for which you have a current approved plan of operations, you may file a noncompetitive lease application for lands within the mining claim, on a form available from BLM. Submit two (2) executed copies of the applicable form to BLM, together with documentation of mining claim ownership and the current approved plan of operations for the mine. At least one form must have an original signature. We will accept only exact copies of the form on one two-sided page.

§ 3204.13 How will BLM process noncompetitive lease applications pending on August 8, 2005?

Noncompetitive lease applications pending on August 8, 2005, will be processed under policies and procedures existing on that date unless the applicant notifies BLM in writing that it elects for the lease application to be subject to the leasing process specified in this subpart, in which case the application will be considered a nomination for future competitive sale offerings for the lands in the application.

§ 3204.14 May I amend my application for a noncompetitive lease?

You may amend your application for a noncompetitive lease at any time before we issue the lease, provided your amended application meets the requirements in this subpart and does not add lands not included in the original application. To add lands, you must file a new application.

§ 3204.15 May I withdraw my application for a noncompetitive lease?

During the 30-day period after the competitive lease sale, BLM will only accept a withdrawal of the entire application. Following that 30-day period, you may withdraw your noncompetitive lease application in whole or in part at any time before BLM issues the lease. If a partial withdrawal causes your lease application to contain less than the minimum acreage required under § 3206.12, BLM will reject the application.

Subpart 3205—Direct Use Leasing

§ 3205.6 When will BLM issue a direct use lease to an applicant?

BLM may issue a direct use lease to an applicant if the following conditions are satisfied:

(a) The lands included in the lease application are open for geothermal leasing;

(b) BLM determines that the lands are appropriate for exclusive direct use operations, without sale, for purposes other than commercial generation of electricity;

(c) The acreage covered by the lease application is not greater than the quantity of acreage that is reasonably necessary for the proposed use;

(d) BLM has published a notice of the land proposed for a direct use lease for 90 days before issuing the lease;

(e) During the 90-day period beginning on the date of publication, BLM did not receive any nomination to include the lands in the next competitive lease sale following that period for which the lands would be eligible;

(f) BLM determines there is no competitive interest in the resource; and

(g) The applicant is the first qualified applicant.

§ 3205.7 How much acreage should I apply for in a direct use lease?

You should apply for only the amount of acreage that is necessary for your intended operation. A direct use lease may not cover more than the quantity of acreage that BLM determines is reasonably necessary for the proposed use. In no case may a direct use lease exceed 5,120 acres, unless the area to be leased includes an irregular subdivision.

§ 3205.10 How do I obtain a direct use lease?

(a) You may file an application for a direct use lease for any lands on which BLM manages the geothermal resources, on a form available from BLM. You may not sell the geothermal resource and you may not use it to commercially generate electricity.

(b) In your application, you must also provide information that will allow BLM to determine how much acreage is reasonably necessary for your proposed use, including:

(1) A description of all anticipated structures, facilities, wells, and pipelines including their size, location, function, and associated surface disturbance;

(2) A description of the utilization process;

(3) A description and analysis of anticipated reservoir production, injection, and characteristics to the extent required by BLM; and

(4) Any additional information or data that we may require.

(c) Submit with your application the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter for each direct use lease application.

§ 3205.12 How will BLM respond to direct use lease applications on lands managed by another agency?

BLM will respond to a direct use lease application on lands managed by another surface management agency by forwarding the application to that agency for its review. If that agency consents to lease issuance and recommends that the lands are appropriate for direct use operations, without sale, for purposes other than commercial generation of electricity, BLM will consider that consent and recommendation in determining whether to issue the lease. BLM may not issue a lease without the consent of the surface management agency.

§ 3205.13 May I withdraw my application for a direct use lease?

You may withdraw your application for a direct use lease any time before issuance of a lease.

§ 3205.14 May I amend my application for a direct use lease?

You may amend your application for a direct use lease at any time before we issue the lease, provided your amended application meets the requirements in this subpart and does not add lands. To add lands, you must file a new application.

§ 3205.15 How will I know whether my direct use lease will be issued?

(a) If BLM decides to issue you a direct use lease, it will do so in accordance with this subpart and subpart 3206.

(b) If BLM decides to deny your application for a direct use lease, it will advise you of its decision in writing.

Subpart 3206—Lease Issuance

§ 3206.10 What must I do for BLM to issue a lease?

Before BLM issues any lease, you must:

(a) Accept all lease stipulations;

(b) Make all required payments to BLM;

(c) Sign a unit joinder or waiver, if applicable; and

(d) Comply with the maximum limit on acreage holdings (see §§ 3206.12 and 3206.16).

§ 3206.11 What must BLM do before issuing a lease?

For all leases, BLM must:

(a) Determine that the land is available; and

(b) Determine that your lease development will not have a significant adverse impact on any significant thermal feature within any of the following units of the National Park System:

(1) Mount Rainier National Park;

(2) Crater Lake National Park;

(3) Yellowstone National Park;

(4) John D. Rockefeller, Jr. Memorial Parkway;

(5) Bering Land Bridge National Preserve;

(6) Gates of the Arctic National Park and Preserve;

(7) Katmai National Park;

(8) Aniakchak National Monument and Preserve;

(9) Wrangell-St. Elias National Park and Preserve;

(10) Lake Clark National Park and Preserve;

(11) Hot Springs National Park;

(12) Big Bend National Park (including that portion of the Rio Grande National Wild Scenic River within the boundaries of Big Bend National Park);

(13) Lassen Volcanic National Park;

(14) Hawaii Volcanoes National Park;

(15) Haleakala National Park;

(16) Lake Mead National Recreation Area; and

(17) Any other significant thermal features within National Park System Units that the Secretary may add to the list of these features, in accordance with 30 U.S.C.1026(a)(3).

§ 3206.12 What are the minimum and maximum lease sizes?

Other than for direct use leases (the size for which is addressed in § 3205.7), the smallest lease we will issue is 640 acres, or all lands available for leasing in the section, whichever is less. The largest lease we will issue is 5,120 acres, unless the area to be leased includes an irregular subdivision. A lease must embrace a reasonably compact area.

§ 3206.13 What is the maximum acreage I may hold?

You may not directly or indirectly hold more than 51,200 acres in any one state.

§ 3206.14 How does BLM compute acreage holdings?

BLM computes acreage holdings as follows:

(a) If you own an undivided lease interest, your acreage holdings include the total lease acreage:

(b) If you own stock in a corporation or a beneficial interest in an association which holds a geothermal lease, your acreage holdings will include your proportionate part of the corporation's or association's share of the total lease acreage. This paragraph applies only if you own more than 10 percent of the corporate stock or beneficial interest of the association; and

(c) If you own a lease interest, you will be charged with the proportionate share of the total lease acreage based on your share of the lease ownership. You will not be charged twice for the same acreage where you own both record title and operating rights for the lease. For example, if you own 50 percent record title interest in a 640 acre lease and 25 percent operating rights, you are charged with 320 acres.

§ 3206.15 How will BLM charge acreage holdings if the United States owns only a fractional interest in the geothermal resources in a lease?

Where the United States owns only a fractional interest in the geothermal resources of the lands in a lease, BLM will only charge you with the part owned by the United States as acreage holdings. For example, if you own 100 percent of record title in a 100 acre lease, and the United States owns 50 percent of the mineral estate, you are charged with 50 acres.

§ 3206.16 Is there any acreage which is not chargeable?

BLM does not count leased acreage included in any approved unit agreement, drilling contract, or development contract as part of your total state acreage holdings.

§ 3206.17 What will BLM do if my holdings exceed the maximum acreage limits?

BLM will notify you in writing if your acreage holdings exceed the limit in § 3206.13. You have 90 days from the date you receive the notice to reduce your holdings to within the limit. If you do not comply, BLM will cancel your leases, beginning with the lease most recently issued, until your holdings are within the limit.

§ 3206.18 When will BLM issue my lease?

BLM issues your lease the day we sign it. Your lease goes into effect the first day of the next month after the issuance date.

Subpart 3207—Lease Terms and Extensions

§ 3207.5 What terms (time periods) apply to my lease?

Your lease may include a number of different time periods. Not every time period applies to every lease. These periods include:

(a) A primary term consisting of:

(1) Ten years;

(2) An initial extension of the primary term for up to 5 years;

(3) An additional extension of the primary term for up to 5 years;

(b) A drilling extension of 5 years under § 3207.14;

(c) A production extension of up to 35 years; and

(d) A renewal period of up to 55 years.

§ 3207.10 What is the primary term of my lease?

(a) Leases have a primary term of 10 years.

(b) BLM will extend the primary term for 5 years if:

(1) By the end of the 10th year of the primary term in paragraph (a), you have satisfied the requirements in § 3207.11; and

(2) At the end of each year after the 10th year of the lease, you have satisfied the requirements in §§ 3207.12(a) or (d) for that year.

(c) BLM will extend the primary term for 5 additional years if:

(1) You satisfied the requirements of §§ 3207.12(b) or (d); and

(2) At the end of each year of the second 5-year extension you satisfy the requirements in § 3207.12(c) or (d) for that year.

(d) If you do not satisfy the annual requirements during the initial or additional extension of your primary term, your lease terminates or expires.

§ 3207.11 What work am I required to perform during the first 10 years of my lease for BLM to grant the initial extension of the primary term of my lease?

(a) By the end of the 10th year, you must expend a minimum of $40 per acre in development activities that provide additional geologic or reservoir information, such as:

(1) Geologic investigation and analysis;

(2) Drilling temperature gradient wells;

(3) Core drilling;

(4) Geochemical or geophysical surveys;

(5) Drilling production or injection wells;

(6) Reservoir testing; or

(7) Other activities approved by BLM.

(b) In lieu of the work requirement in paragraph (a) of this section, you may:

(1) Make a payment to BLM equivalent to the required work expenditure such that the total of the payment and the value of the work you perform equals $40 per acre (or fraction thereof) of land included in your lease; or

(2) Submit documentation to BLM that you have produced or utilized geothermal resources in commercial quantities.

(c) Prior to the end of the 10th year of the primary term, you must submit detailed information to BLM demonstrating that you have complied with paragraph (a) or (b) of this section. Describe the activities by type, location, date(s) conducted, and the dollar amount spent on those operations. Include all geologic information obtained from your activities in your report. Submit additional information that BLM requires to determine compliance within the timeframe that we specify. We must approve the type of work done and the expenditures claimed in your report before we can credit them toward your requirements.

(d) If you do not perform development activities, make payments, or document production or utilization as required by this section, your lease will expire at the end of the 10-year primary term.

(e) If you complied with paragraph (c) of this section, but BLM has not determined by the end of the 10th year whether you have complied with the requirements of paragraph (a) or (b) of this section, upon request we will suspend your lease effective immediately before its expiration in order to determine your compliance. If we determine that you have complied, we will lift the suspension and grant the first 5-year extension of the primary term effective on the first day of the month following our determination of compliance. If we determine that you have not complied, we will terminate the suspension and your lease will expire upon the date of the termination of the suspension.

(f) Every three calendar years the dollar amount of the work requirements and the amount to be paid in lieu of such work required by this section will automatically be updated. The update will be based on the change in the Implicit Price Deflator-Gross Domestic Product for those three years.

§ 3207.12 What work am I required to perform each year for BLM to continue the initial and additional extensions of the primary term of my lease?

(a) To continue the initial extension of the primary term of your lease, in each of lease years 11, 12, 13, and 14, you must expend a minimum of $15 per acre (or fraction thereof) per year in development activities that establish a geothermal potential or confirm the existence of producible geothermal resources. Such activities include, but are not limited to:

(1) Geologic investigation and analysis;

(2) Drilling temperature gradient wells;

(3) Core drilling;

(4) Geochemical or geophysical surveys;

(5) Drilling production or injection wells;

(6) Reservoir testing; or

(7) Other activities approved by BLM.

(b) For BLM to grant the additional extension of the primary term of your lease, in year 15 you must expend a minimum of $15 per acre (or fraction thereof) per year in development activities that provide additional geologic or reservoir information, such as those described in paragraph (a) of this section.

(c) To continue the additional extension of the primary term of your lease, in each of lease years 16, 17, 18, and 19, you must expend a minimum of $25 per acre (or fraction thereof) per year in development activities that provide additional geologic or reservoir information, such as those described in paragraph (a) of this section.

(d) In lieu of the work requirements in paragraphs (a), (b), and (c) of this section, you may:

(1) Submit documentation to BLM that you have produced or utilized geothermal resources in commercial quantities; or

(2) Make a payment to BLM equivalent to the required annual work expenditure such that the total of the payment and the value of the work you perform equals $15 or $25 per acre per year of land included in your lease, as applicable. BLM may limit the number of years that it will accept such payments if it determines that further payments in lieu of the work requirements would impair achievement of diligent development of the geothermal resources.

(e) Under paragraph (a) or paragraph (b) of this section, if you expend an amount greater than the amount specified, you may apply any payment in excess of the specified amount to any subsequent year within the applicable 5-year extension of the primary term. An excess payment during the first 5-year extension period may not be applied to any year within the second 5-year extension period.

(f) You must submit information to BLM showing that you have complied with the applicable requirements in this section no later than:

(1) 60 days after the end of years 11, 12, 13, and 14;

(2) 60 days before the end of year 15;

(3) 60 days after the end of years 16, 17, 18, and 19.

(g) In your submission, describe your activities by type, location, date(s) conducted, and the dollar amount spent on those operations. Include all geologic information obtained from your activities in your report. We must approve the type of work done and the expenditures claimed in your report before we can credit them toward your requirements. We will notify you if you have not met the requirements.

(h) If you do not comply with the requirements of this section in any year of a 5-year extension of the primary term, BLM will terminate your lease at the end of that year unless you qualify for a drilling extension under § 3207.13.

(i) Every three calendar years the dollar amount of the work requirements and the amount to be paid in lieu of such work required by this section will automatically be updated. The update will be based on the change in the Implicit Price Deflator-Gross Domestic Product for those three years.

§ 3207.13 Must I comply with BLM requirements when my lease overlies a mining claim?

(a) BLM will exempt you from complying with the requirements of §§ 3207.11 and 3207.12 when you demonstrate to BLM that:

(1) The mining claim has a plan of operations approved by the appropriate Federal land management agency; and

(2) Your development of the geothermal resource on the lease would interfere with the mining operations.

(b) The exemption provided under paragraph (a) of this section expires upon termination of the mining operations.

§ 3207.14 How do I qualify for a drilling extension?

(a) BLM will extend your lease for 5 years under a drilling extension if at the end of the 10th year or any subsequent year of the initial or additional extension of the primary term you:

(1) Have not met the requirements that you must satisfy for BLM to grant or to continue the initial or additional extensions of your primary lease term under § 3207.12, or your lease is in its 20th year;

(2) Commenced drilling a well before the end of such year for the purposes of testing or producing a geothermal reservoir; and

(3) Are diligently drilling to a target that BLM determines is adequate, based on the local geology and type of development you propose.

(b) The drilling extension is effective on the first day following the expiration or termination of the primary term.

(c) At the end of your drilling extension, your lease will expire unless

you qualify for a production extension under § 3207.15.

§ 3207.15 How do I qualify for a production extension?

(a) BLM will grant a production extension of up to 35 years if you are producing or utilizing geothermal resources in commercial quantities.

(b) Before granting a production extension, BLM must determine that you:

(1) Have a well that is actually producing geothermal resources in commercial quantities; or

(2)(i) Have completed a well that is capable of producing geothermal resources in commercial quantities; and

(ii) Are making diligent efforts toward utilization of the resource.

(c) To qualify for a production extension under paragraph (b)(2) of this section, unless BLM specifies otherwise you must demonstrate on an annual basis that you are making diligent efforts toward utilization of the resource.

(d) BLM will make the determinations required under paragraphs (b)(1) and (b)(2)(i) of this section based on the information you provide under subparts 3264 and 3276 and any other information that BLM may require you to submit.

(e) For BLM to make the determination required under paragraph (b)(2)(ii) of this section, you must provide BLM with information, such as:

(1) Actions you have taken to identify and define the geothermal resource on your lease;

(2) Actions you have taken to negotiate marketing arrangements, sales contracts, drilling agreements, or financing for electrical generation and transmission projects;

(3) Current economic factors and conditions that would affect the decision of a prudent operator to produce or utilize geothermal resources in commercial quantities on your lease; and

(4) Other actions you have taken, such as obtaining permits, conducting environmental studies, and meeting permit requirements.

(f) Your production extension will begin on the first day of the month following the end of the primary term (including the initial and additional extensions) or the drilling extension.

(g) Your production extension will continue for up to 35 years as long as the geothermal resource is being produced or utilized in commercial quantities. If you fail to produce or utilize geothermal resources in commercial quantities, BLM will terminate your lease unless you meet the conditions set forth in § 3213.19.

§ 3207.16 When may my lease be renewed?

You have a preferential right to renew your lease for a second term of up to 55 years, under such terms and conditions as BLM deems appropriate, if at the end of the production extension, you are producing or utilizing geothermal resources in commercial quantities and the lands are not needed for any other purpose. The renewal term will continue as long as you produce or utilize geothermal resources in commercial quantities and satisfy other terms and conditions BLM imposes.

§ 3207.17 How is the term of my lease affected by commitment to a unit?

(a) If your lease is committed to a unit agreement and its term would expire before the unit term would, BLM may extend your lease to match the term of the unit. We will do this if unit development has been diligently pursued while your lease is committed to the unit.

(b) To extend the term of a lease committed to a unit, the unit operator must send BLM a request for lease extension at least 60 days before the lease expires showing that unit development has been diligently pursued. BLM may request additional information.

(c) Within 30 days after receiving your extension request, BLM will notify the unit operator whether we approve.

§ 3207.18 Can my lease be extended if it is eliminated from a unit?

If your lease is eliminated from a unit under § 3283.6, it is eligible for a drilling extension or a production extension if it meets the requirements for such extensions.

Subpart 3210—Additional Lease Information

§ 3210.10 When does lease segregation occur?

(a) Lease segregation occurs when:

(1) A portion of a lease is committed to a unit agreement while other portions are not committed; or

(2) Only a portion of a lease remains in a participating area when the unit contracts. The portion of the lease outside the participating area would be eliminated from the unit agreement and segregated as of the effective date of the unit contraction.

(b) BLM will assign the original lease serial number to the portion within the plan or agreement. BLM will give the lease portion outside the plan or agreement a new serial number, and the same lease terms as the original lease.

§ 3210.11 Does a lease segregated from an agreement or plan receive any benefits from unitization of the committed portion of the original lease?

The new segregated lease stands alone and does not receive any of the benefits provided to the portion committed to the unit. We will not give you an extension for the eliminated portion of the lease based on status of the lands committed to the unit, including production in commercial quantities or the existence of a producible well.

§ 3210.12 May I consolidate leases?

BLM may approve your consolidation of two or more adjacent leases that have the same ownership and same lease terms, including expiration dates, if the combined leases do not exceed the size limitations in § 3206.12. We may consolidate leases that have different stipulations if all other lease terms are the same. You must include the processing fee for lease consolidations found in the fee schedule in § 3000.12 of this chapter with your request to consolidate leases.

§ 3210.13 Can anyone lease or locate other minerals on the same lands as my geothermal lease?

Yes. Anyone may lease or locate other minerals on the same lands as your geothermal lease. The United States reserves the ownership of and the right to extract helium, oil, and hydrocarbon gas from all geothermal steam and associated geothermal resources. In addition, BLM allows mineral leasing or location on the same lands that are leased for geothermal resources, provided that operations under the mineral leasing or mining laws do not unreasonably interfere with or endanger your geothermal operations.

§ 3210.14 May BLM readjust the terms and conditions in my lease?

(a)(1) Except for rentals and royalties (readjustments of which are addressed in paragraph (b)) of this section, BLM may readjust the terms and conditions of your lease 10 years after you begin production of geothermal resources from your lease, and at not less than 10-year intervals thereafter, under the procedures of paragraphs (c), (d), and (e) of this section.

(2) If another Federal agency manages the lands' surface, we will ask that agency to review the related terms and conditions and propose any readjustments. Once BLM and the surface managing agency reach agreement and the surface managing agency approves the proposed readjustment, we will follow the procedures in paragraphs (c), (d), and (e) of this section.

(b) BLM may readjust your lease rentals and royalties at not less than 20-year intervals beginning 35 years after we determine that your lease is producing geothermal resources in commercial quantities. BLM will not increase your rentals or royalties by more than 50 percent over the rental or royalties you paid before the readjustment.

(c) BLM will give you a written proposal to adjust the rentals, royalties, or other terms and conditions of your lease. You will have 30 days after you receive the proposal to file with BLM an objection in writing to the proposed new terms and conditions.

(d) If you do not object in writing or relinquish your lease, you will conclusively be deemed to have agreed to the proposed new terms and conditions. BLM will issue a written decision setting the date that the new terms and conditions become effective as part of your lease. This decision will be in full force and effect under its own terms, and you are not authorized to appeal the BLM decision to the Office of Hearings and Appeals.

(e)(1) If you file a timely objection in writing, BLM may issue a written decision making the readjusted rental and royalty terms effective no sooner than 90 days after we receive your objections, unless we reach an agreement with you as to the readjusted terms of your lease that makes such terms effective sooner.

(2) If BLM does not reach an agreement with you by 60 days after we receive your objections, then either the lessee or BLM may terminate your lease, upon giving the other party 30 days' notice in writing. A termination under this paragraph does not affect your obligations that accrued under the lease when it was in effect, including those specified in § 3200.4.

§ 3210.15 What if I appeal BLM's decision to readjust my lease terms?

If you appeal our decision under § 3210.14(e)(1) to readjust your lease terms and conditions, or rental or royalty rate, the decision is effective during the appeal. If you win your appeal and we must change our decision, you will receive a refund or credit for any overpaid rents or royalties.

§ 3210.16 How must I prevent drainage of geothermal resources from my lease?

You must prevent the drainage of geothermal resources from your lease by diligently drilling and producing wells that protect the Federal geothermal resource from loss caused by production from other properties.

§ 3210.17 What will BLM do if I do not protect my lease from drainage?

BLM will determine the amount of geothermal resources drained from your lease. MMS will bill you for a compensatory royalty based on our findings. This royalty will equal the amount you would have paid for producing those resources. All interest owners in a lease are jointly and severally liable for drainage protection and any compensatory royalties.

Subpart 3211—Filing and Processing Fees, Rent, Direct Use Fees, and Royalties

§ 3211.10 What are the processing and filing fees for leases?

(a) Processing or filing fees are required for the following actions:

(1) Nomination of lands for competitive leasing;

(2) Competitive lease application;

(3) Noncompetitive lease application (including application for direct use leases);

(4) Assignment and transfer of record title or operating right;

(5) Name change, corporate merger or transfer to heir/devisee;

(6) Lease consolidation; and

(7) Lease reinstatement.

(b) The amounts of these fees can be found in § 3000.12 of this chapter.

§ 3211.11 What are the annual lease rental rates?

(a) BLM calculates annual rent based on the amount of acreage covered by your lease. To determine lease acreage for this section, round up any partial acreage up to the next whole acre. For example, the annual rent on a 2,456.39 acre lease is calculated based on 2,457 acres.

(b) If you obtained your lease through a competitive lease sale, then your annual rent is $2 per acre for the first year, and $3 per acre for the second through tenth year.

(c) If you obtained your lease noncompetitively, then your annual rent is $1 per acre for the first 10 years.

(d) After the tenth year, your annual rent will be $5 per acre, regardless of whether you obtained your lease through a competitive lease sale or noncompetitively.

(e) For leases in which the United States owns only a fractional interest in the geothermal resources, BLM will prorate the rents established in paragraphs (a), (b), and (c) of this section, based on the fractional interest owned by the United States. For example, if the United States owns 50 percent of the geothermal resources in a 640 acre lease, you pay rent based on 320 acres.

§ 3211.12 How and where do I pay my rent?

(a) *First year.* Pay BLM the first year's rent in advance. You may use a personal check, cashier's check, or money order made payable to the Department of the Interior—Bureau of Land Management. You may also make payments by credit card or electronic funds transfer with our prior approval.

(b) *Subsequent years.* For all subsequent years, make your rental payments to MMS. See MMS regulations at 30 CFR part 218.

§ 3211.13 When is my annual rental payment due?

Your rent is always due in advance. MMS must receive your annual rental payment by the anniversary date of the lease each year. See the MMS regulations at 30 CFR part 218, which explain when MMS considers a payment as received. If less than a full year remains on a lease, you must still pay a full year's rent by the anniversary date of the lease. For example, the rent on a 2,000-acre lease for the 11th year, would be $10,000 ($5 per acre), due prior to the 10th anniversary of the lease.

§ 3211.14 Will I always pay rent on my lease?

You must always pay rental, whether you are in a unit or outside of a unit, whether your lease is in production or not, and whether royalties or direct use fees apply to your production.

§ 3211.15 How do I credit rent towards royalty?

You may credit rental towards royalty under MMS regulations at 30 CFR 218.303.

§ 3211.16 Can I credit rent towards direct use fees?

No. You may not credit rental towards direct use fees. See MMS regulations at 30 CFR 218.304.

§ 3211.17 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used for commercial generation of electricity?

(a) For leases issued after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee elects to be subject to royalty regulations in effect on that date), the royalty rate is the rate prescribed in this paragraph.

(1) If you or your affiliate sell(s) electricity generated by use of geothermal resources produced from or attributed to your lease, then:

(i) For the first 10 years of production, the royalty rate is 1.75 percent;

(ii) After the first 10 years of production, the royalty rate is 3.5 percent; and

(iii) You must apply the rate established under this paragraph to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206 subpart H.

(2) If you or your affiliate sell(s) geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, then the royalty rate is 10 percent. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206 subpart H.

(b) For leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, BLM will establish the royalty rate.

(1) BLM will seek to establish a rate that it expects will yield total royalty payments equivalent to those that would have been paid under the royalty rate in effect for the lease before August 5, 2005. That rate is not limited to the range of rates specified in 30 U.S.C. 1004(a)(1). If you have not previously produced geothermal resources under your lease for the commercial generation of electricity, BLM will establish a royalty rate equal to that set forth in paragraph (a)(1) of this section.

(2) You must apply the rate that BLM establishes to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206 subpart H.

(c) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee elects to be subject to the royalty regulations in effect on that date, the royalty rate is the rate prescribed in the lease instrument.

§ 3211.18 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used directly for purposes other than commercial generation of electricity?

(a) For leases issued after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee elects to be subject to royalty regulations in effect on that date), and for leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25:

(1) If you or your affiliate use(s) the geothermal resources directly and do(es) not sell those resources at arm's length, no royalty rate applies. Instead, you must pay direct use fees according to a schedule published by MMS under MMS regulations at 30 CFR 206.356.

(2) If you or your affiliate sell(s) the geothermal resources at arm's length to a purchaser who uses the resources for purposes other than commercial generation of electricity, your royalty rate is 10 percent. You must apply that royalty rate to the gross proceeds derived from the arm's-length sale under applicable MMS regulations at 30 CFR part 206 subpart H.

(3) If you are a lessee and you are a State, tribal, or local government, no royalty rate applies. Instead you must pay a nominal fee established under MMS rules at 30 CFR 206.366.

(b) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee elects to be subject to the royalty regulations in effect on that date, the royalty rate is the rate prescribed in the lease instrument.

(c) For purposes of this section, direct use of geothermal resources includes generation of electricity that is not sold commercially and that is used solely for the operation of a facility unrelated to commercial electrical generation.

§ 3211.19 What is the royalty rate on byproducts derived from geothermal resources produced from or attributable to my lease?

(a) For byproducts derived from geothermal resource production that are identified in section 1 of the Mineral Leasing Act (MLA), as amended (30 U.S.C. 181) (e.g., oil, gas, phosphate, sodium, and potash), the royalty rate is the royalty rate that is prescribed in the MLA or in the regulations implementing the MLA for production of that mineral under a lease issued under the MLA. For example, if you produce sodium as a byproduct, the royalty on that sodium would be 2 percent, which would be applied to the gross value of the product under applicable MMS rules (30 U.S.C. 262).

(b) For a byproduct that is not specified in 30 U.S.C. 181, the royalty rate is 5 percent. You must apply that rate to the value of that byproduct established under applicable MMS rules at 30 CFR part 206 subpart H.

§ 3211.20 How do I credit advanced royalty towards royalty?

You may credit advanced royalty toward royalty under MMS regulations at 30 CFR 218.305(c).

Subpart 3212—Lease Suspensions and Royalty Rate Reductions

§ 3212.10 What is the difference between a suspension of operations and production and a suspension of operations?

(a) A suspension of operations and production is a temporary relief from production obligations which you may request from BLM. Under this paragraph you must cease all operations on your lease.

(b) A suspension of operations is when BLM orders you, to stop production temporarily in the interest of conservation.

§ 3212.11 How do I obtain a suspension of operations or operations and production on my lease?

(a) If you are the operator, you may request in writing that BLM suspend your operations and production for a producing lease. Your request must fully describe why you need the suspension. BLM will determine if your suspension is justified and, if so, will approve it.

(b) BLM may suspend your operations on any lease in the interest of conservation.

(c) A suspension under this section may include leases committed to an approved unit agreement. If leases committed to a unit are suspended, the unit operator must continue to satisfy unit terms and obligations, unless BLM also suspends unit terms and obligations, in whole or in part, under subpart 3287 of this part.

§ 3212.12 How long does a suspension of operations or operations and production last?

(a) BLM will state in your suspension notice how long your suspension of operations or operations and production is effective.

(b) During a suspension, you may ask BLM in writing to terminate your suspension. You may not unilaterally terminate a suspension that BLM ordered. A suspension of operations and production that we approved upon your request will automatically terminate when you begin or resume authorized production or drilling operations.

(c) If we receive information showing that you must resume operations to protect the interests of the United States, we will terminate your suspension and order you to resume production.

(d) If a suspension terminates, you must resume paying rents and royalty (see § 3212.14).

§ 3212.13 How does a suspension affect my lease term and obligations?

(a) If BLM approves a suspension of operations and production:

(1) Your lease term is extended by the length of time the suspension is in effect; and

(2) You are not required to drill, produce geothermal resources, or pay rents or royalties during the suspension. We will suspend your obligation to pay lease rents or royalties beginning the first day of the month following the date the suspension is effective.

(b) If BLM orders you to suspend your operations;

(1) Your lease term is extended by the length of time the suspension is in effect; and

(2) Your lease rental or royalty obligations are not suspended, unless BLM determines that you will be denied all beneficial use of your lease during the period of the suspension.

§ 3212.14 What happens when the suspension ends?

When the suspension ends, you must resume rental and royalty payments that were suspended, beginning on the first day of the lease month after BLM terminates the suspension. You must pay the full rental amount due on or before the next lease anniversary date. If you do not make the rental payments on time, BLM will refund your balance and terminate the lease.

§ 3212.15 Can my lease remain in full force and effect if I cease production and I do not have a suspension?

In the absence of a suspension approved or ordered under § 3212.11, if you cease production for more than one calendar month on a lease that is subject to royalties and that has achieved commercial production (through actual or allocated production), your lease will remain in full force and effect only if the circumstances described in paragraph (a), (b), or (c) apply:

(a) If, during the period in which production is ceased, you continue to pay a monthly advanced royalty under MMS regulations at 30 CFR 218.305. This option is available only for an aggregate of 10 years (120 months, whether consecutive or not).

(b) The Secretary:

(1) Requires or causes the cessation of production; or

(2) Determines that the cessation in production is required or otherwise caused by:

(i) The Secretary of the Air Force, Army, or Navy;

(ii) A State or a political subdivision of a State; or

(iii) Force majeure.

(c) The discontinuance of production is caused by the performance of maintenance necessary to maintain operations. Such maintenance is considered a production activity, not a cessation of production. Such maintenance may include activities such as: Overhauling your power plant, re-drilling or re-working wells that are critical to plant operation, or repairing and improving gathering systems or transmission lines that necessitate the discontinuation of production. You must obtain BLM approval by submitting a Geothermal Sundry Notice in advance if the activity will require more than one calendar month to be classified as maintenance under this paragraph.

§ 3212.16 Can I apply to BLM to reduce, suspend, or waive the royalty or rental of my lease?

(a) You may apply for a suspension, reduction or waiver of your rent or royalty for any lease or portion thereof. BLM may grant your request in the interest of conservation and to encourage the greatest ultimate recovery of geothermal resources, if we determine that:

(1) Granting the request is necessary to promote development; or

(2) You cannot successfully operate the lease under its current terms.

(b) BLM will not approve a royalty reduction, suspension or waiver unless all royalty interest owners other than the United States accept a similar reduction, suspension, or waiver.

§ 3212.17 What information must I submit when I request that BLM suspend, reduce, or waive my royalty or rental?

(a) Your request for suspension, reduction or waiver of the royalty or rental must include all information BLM needs to determine if the lease can be operated under its current terms, including:

(1) The type of reduction you seek;

(2) The serial number of your lease;

(3) The names and addresses of the lessee and operator;

(4) The location and status of wells;

(5) A summary of monthly production from your lease; and

(6) A detailed statement of expenses and costs.

(b) If you are applying for a royalty reduction, suspension or waiver, you must also provide to BLM a list of names of royalty interest owners other than the United States, the amounts of royalties or payments out of production paid to them, and every effort you have made to reduce these payments.

§ 3212.18 What are the production incentives for leases?

You will receive a production incentive in the form of a temporary 50 percent reduction in your royalties under MMS regulations at 30 CFR 218.307 if:

(a) Your lease was in effect prior to August 8, 2005;

(b) You do not convert the royalty rates of your lease under § 3212.25;

(c) By August 7, 2011, production from or allocated to your lease is utilized for commercial production in a:

(1) New facility (see § 3212.22); or

(2) Qualified expansion project (see § 3212.21); and

(d) The production from your lease is used for the commercial generation of electricity.

§ 3212.19 How do I apply for a production incentive?

Submit to BLM a written request for a production incentive describing a project that may qualify as a new facility or qualified expansion project. Identify whether you are requesting that the project be considered as a new facility (see § 3212.22) or as a qualified expansion project (see § 3212.21) and explain why your project qualifies under these regulations. The request must be received no later than August 7, 2011.

§ 3212.20 How will BLM review my request for a production incentive?

(a) BLM will review your request on a case-by-case basis to determine whether your project meets the criteria for a qualified expansion project under § 3212.21 or a new facility under § 3212.22. If it does not meet the criteria for the type of project you requested, we will determine whether it meets the criteria for the other type of production incentive project.

(b) If BLM determines that you have a qualified expansion project, we will, as part of our approval, provide you with a schedule of monthly target net generation amounts. These amounts will quantify the required 10 percent increase in net generation over the projected net generation without the project. The schedule will be specific to the facility or facilities that are affected by the project and will cover the 48-month time period during which your production incentive may apply.

(c) If BLM determines that you have met the criteria for a new facility, we will provide you with written notification of this determination.

§ 3212.21 What criteria establish a qualified expansion project for the purpose of obtaining a production incentive?

A qualified expansion project must meet the following criteria:

(a) It must involve substantial capital expenditure. Examples include the drilling of additional wells, retrofitting existing wells and collection systems to

increase production rates, retrofitting turbines or power plant components to increase efficiency, adding additional generation capacity to existing plants, and enhanced recovery projects such as augmented injection. Projects that are not associated with substantial capital expenditure, such as opening production valves and operating existing equipment at higher rates, do not qualify as expansion projects.

(b) The project must have the potential to increase the net generation by more than 10 percent over the projected generation without the project, using data from the previous 5 years. If 5 years of data are not available, it is not a qualified expansion project.

§ 3212.22 What criteria establish a new facility for the purpose of obtaining a production incentive?

(a) Criteria for determining whether a project is a new facility for the purpose of obtaining a production incentive include:

(1) The project requires a new site license or facility construction permit if it is on Federal lands;

(2) The project requires a new Commercial Use Permit;

(3) The project includes at least one new turbine-generator unit;

(4) The project involves a new sales contract;

(5) The project involves a new site or substantially larger footprint; and

(6) The project is not contiguous to an existing project.

(b) Generally, a new facility will not:

(1) Be permitted only with a Geothermal Drilling Permit;

(2) Be constructed entirely within the footprint of an existing facility; or

(3) Involve only well-field projects such as drilling new wells, increasing injection, and enhanced recovery projects.

§ 3212.23 How will the production incentive apply to a qualified expansion project?

(a) The production incentive will begin on the first day of the month following the commencement of commercial operation of the qualified expansion project. The incentive will be in effect for up to 48 consecutive months, applicable only to those months in which the actual generation from the facility or facilities affected by the project meets or exceeds the target generation established by BLM. The amount of the production incentive is established in MMS regulations at 30 CFR 218.307.

(b) The production incentive will apply only to the increase in net generation. The increase in generation for any month in which the production incentive is in effect will be determined as follows:

$$\Delta G_i = G_{a,i} - \frac{G_{t,i}}{1.1}$$

Where:

i is a month for which a production incentive is in effect;

ΔG_i is the increase in generation for month i;

$G_{a,i}$ is the actual generation in month i;

$G_{t,i}$ is the target generation in month i, as provided in § 3212.19(b).

§ 3212.24 How will the production incentive apply to a new facility?

(a) If BLM determines that your project qualifies as a new facility, the production incentive will begin on the first day of the month following the commencement of commercial operations at that facility, and will be in effect for 48 consecutive months.

(b) The amount of the production incentive is established in MMS regulations at 30 CFR 218.307.

§ 3212.25 Can I convert the royalty terms of a lease in effect before August 8, 2005, to the terms of the Geothermal Steam Act, as amended by the Energy Policy Act of 2005?

(a) If your lease was in effect before August 8, 2005, you may submit to BLM a request to modify the royalty terms of your lease to the applicable royalty or direct use fee terms prescribed in the Geothermal Steam Act as amended by the Energy Policy Act of 2005. If your request to modify is granted, the new royalty rate or direct use fees will apply to all geothermal resources produced from your lease.

(b)(1) The royalty rate for leases whose terms are modified and production from which is used for commercial generation of electricity is prescribed in § 3211.17(b).

(2) The direct use fees or royalty rate for leases whose terms are modified and production from which is used directly for purposes other than commercial generation of electricity is prescribed in § 3211.18(a) and MMS regulations at 30 CFR 206.356.

§ 3212.26 How do I submit a request to modify the royalty terms of my lease to the applicable terms prescribed in the Energy Policy Act of 2005?

(a) You must submit a written request to BLM that contains the serial numbers of the leases whose terms you wish to modify and:

(1) For direct use operations, any other information that BLM may require; or

(2) For commercial electrical generation operations, for each month during the 10-year period preceding the date of your request (or from when electrical generation operations began if less than 10 years before the date of your request):

(i) The gross proceeds received by you or your affiliate from the sale of electricity;

(ii) The amount of royalty paid;

(iii) The amount of generating and transmission deductions subtracted from the gross proceeds to derive the royalty value if you are using the geothermal netback procedure under MMS regulations to calculate royalty value;

(iv) If you are or your affiliate is selling the geothermal resources at arm's length before those resources are used to generate electricity, documentation that you have access to the purchaser's gross proceeds derived from the sale of the electricity; and

(v) Any other information that BLM may require.

(c) BLM must receive your request no later than:

(1) For leases whose geothermal resource production is used directly for purposes other than commercial generation of electricity, 18 months after the effective date of the schedule of fees established by MMS under 30 CFR 206.356(b); or

(2) For leases whose geothermal resource production is used for commercial generation of electricity, [DATE 18 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

§ 3212.27 How will BLM or MMS review my request to modify the lease royalty terms?

After you submit your request to modify the royalty terms under § 3212.25, BLM will:

(a) Review your application, and if BLM determines that:

(1) Your application is complete and contains all necessary information, we will notify you of the date on which your request was received; or

(2) Your request is not complete or does not contain all necessary information, we will notify you of the additional information that is required;

(b) Analyze the data you submitted to establish a royalty rate if the geothermal resources are used for commercial electrical generation;

(c) Consult with MMS and any State or local governments that may be affected by the change in royalty terms; and

(d) Within 180 days from the day on which we determine a complete request when all necessary information was

received, we will send you a decision letter notifying you whether we approve the modification to the lease terms.

Subpart 3213—Relinquishment, Termination, and Cancellation

§ 3213.10 Who may relinquish a lease?

Only the record title owner may relinquish a lease in full or in part. If there is more than one record title owner for a lease, all record title owners must sign the relinquishment.

§ 3213.11 What must I do to relinquish a lease?

Send BLM a written request that includes the serial number of each lease you are relinquishing. If you are relinquishing the entire lease, no legal description of the land is required. If you are relinquishing part of the lease, you must describe the lands relinquished. BLM may request additional information if necessary.

§ 3213.12 May BLM accept a partial relinquishment if it will reduce my lease to less than 640 acres?

Except for direct use leases, lands remaining in your lease must contain at least 640 acres, or all of your leased lands must be in one section, whichever is less. Otherwise, we will not accept your partial relinquishment. BLM will only allow an exception if it will further development of the resource. The size of direct use leases is addressed in § 3205.07.

§ 3213.13 When does my relinquishment take effect?

(a) If BLM determines your relinquishment request meets the requirements of §§ 3213.11 and 3213.12, your relinquishment is effective the day we receive it.

(b) Notwithstanding the relinquishment, you and your surety continue to be responsible for:

(1) Paying all rents and royalties due before the relinquishment was effective;

(2) Plugging and abandoning all wells on the relinquished land;

(3) Restoring and reclaiming the surface and other resources; and

(4) Complying with § 3200.4.

§ 3213.14 Will BLM terminate my lease if I do not pay my rent on time?

(a) If MMS does not receive your second and subsequent year's rental payment in full by the lease anniversary date, MMS will notify you that the rent payment is overdue.

You have 45 days from the anniversary date to pay the rent plus a 10 percent late fee. If MMS does not receive your rental plus the late fee by the end of the 45-day period, BLM will terminate your lease.

(b) If you receive notification from MMS under paragraph (a) of this section more than 15 days after the lease anniversary date, BLM will reinstate a lease that was terminated under paragraph (a) of this section if MMS receives the rent plus a 10 percent late fee within 30 days after you receive the notification.

§ 3213.15 How will BLM notify me if it terminates my lease?

BLM will send you a notice of the termination by certified mail, return receipt requested.

§ 3213.16 May BLM cancel my lease?

(a) BLM may cancel your lease if it was issued in error.

(b) If BLM cancels your lease because it was issued in error, the cancellation is effective when you receive it.

§ 3213.17 May BLM terminate my lease for reasons other than non-payment of rentals?

BLM may terminate your lease for reasons other than non-payment of rentals, after giving you 30-days written notice, if we determine that you violated the requirements of § 3200.4, including, but not limited to the nonpayment of royalties and fees under 30 CFR parts 206 and 218.

§ 3213.18 When is a termination effective?

If BLM terminates your lease because we determined that you violated the requirements of § 3200.4, the termination takes effect 30 days from the date you receive notice of our determination.

§ 3213.19 What can I do if BLM notifies me that my lease is being terminated because of a violation of the law, regulations, or lease terms?

(a) You can prevent termination of your lease if, within 30 days after receipt of our notice:

(1) You correct the violation; or

(2) You show us that you cannot correct the violation during the 30-day period and that you are making a good faith attempt to correct the violation as quickly as possible, and thereafter you diligently proceed to correct the violation.

(b)(1) You may appeal the lease termination. You have 30 days after receipt of our notice to file an appeal (see parts 4 and 1840 of this title). We will stay the termination of your lease while your appeal is pending.

(2) You are entitled to a hearing on the violation or the proposed lease termination if you request the hearing when you file the appeal. The period for correction of the violation will be extended to 30 days after the decision on appeal is made if the decision concludes that a violation exists.

Subpart 3214—Personal and Surety Bonds

§ 3214.10 Who must post a geothermal bond?

(a) The lessee or operator must post a bond with BLM before exploration, drilling or utilization operations begin.

(b) Before we approve a lease transfer or recognize a new designated operator, the lessee or operator must file a new bond or a rider to the existing bond, unless all previous operations on the land have already been reclaimed.

§ 3214.11 Who must my bond cover?

Your bond must cover all record title owners, operating rights owners, operators, and any person who conducts operations on your lease.

§ 3214.12 What activities must my bond cover?

Your bond must cover:

(a) Any activities related to exploration, drilling, utilization, or associated operations on a Federal lease;

(b) Reclamation of the surface and other resources;

(c) Royalty payments; and

(d) Compliance with the requirements of § 3200.4.

§ 3214.13 What is the minimum dollar amount required for a bond?

The minimum bond amount varies depending on the type of activity you are proposing and whether your bond will cover individual, statewide, or nationwide activities. The minimum dollar amounts and bonding options for each type of activity are found in the following regulations:

(a) Exploration operations—see § 3251.15;

(b) Drilling operations—see § 3261.18; and

(c) Utilization operations—see §§ 3271.12 and 3273.19.

§ 3214.14 May BLM increase the bond amount above the minimum?

(a) BLM may increase the bond amount above the minimums referenced in § 3214.13 when:

(1) We determine that the operator has a history of noncompliance;

(2) We previously had to make a claim against a surety because any one person who is covered by the new bond failed to plug and abandon a well and reclaim the surface in a timely manner;

(3) MMS has notified BLM that a person covered by the bond owes uncollected royalties; or

(4) We determine that the bond amount will not cover the estimated reclamation cost.

(b) We may increase bond amounts to any level, but we will not set that

amount higher than the total estimated costs of plugging wells, removing structures, and reclaiming the surface and other resources, plus any uncollected royalties due MMS or moneys owed to BLM due to previous violations.

§ 3214.15 What kind of financial guarantee will BLM accept to back my bond?

We will not accept cash bonds. We will only accept:

(a) Corporate surety bonds, provided that the surety company is approved by the Department of the Treasury (see Department of the Treasury Circular No. 570, which is published in the **Federal Register** every year on or about July 1); and

(b) Personal bonds, which are secured by a cashier's check, certified check, certificate of deposit, negotiable securities such as Treasury notes, or an irrevocable letter of credit (see §§ 3214.21 and 3214.22).

§ 3214.16 Is there a special bond form I must use?

You must use a BLM-approved bond form (Form 3000–4, or Form 3000–4a, June 1988 or later editions) for corporate surety bonds and personal bonds.

§ 3214.17 Where must I submit my bond?

File personal or corporate surety bonds and statewide bonds in the BLM State Office that oversees your lease or operations. You may file nationwide bonds in any BLM State Office. File bond riders in the BLM State Office where your underlying bond is located. For personal or corporate surety bonds, file one originally-signed copy of the bond.

§ 3214.18 Who will BLM hold liable under the lease and what are they liable for?

BLM will hold all interest owners in a lease jointly and severally liable for compliance with the requirements of § 3200.4 for obligations that accrue while they hold their interest. Among other things, all interest owners are jointly and severally liable for:

(a) Plugging and abandoning wells;

(b) Reclaiming the surface and other resources;

(c) Compensatory royalties assessed for drainage; and

(d) Rent and royalties due.

§ 3214.19 What are my bonding requirements when a lease interest is transferred to me?

(a) Except as otherwise provided in this section, if the lands to be transferred to you contain a well or any other surface disturbance which the original lessee did not reclaim, you must post a bond under this subpart before BLM will approve the transfer.

(b) If the original lessee does not transfer all interest in the lease to you, you may become a co-principal on the original bond, rather than posting a new bond.

(c) You do not need to post an additional bond if:

(1) You previously furnished a statewide or nationwide bond sufficient to cover the lands transferred; or

(2) The operator provided the original bond, and the operator does not change.

§ 3214.20 How do I modify my bond?

You may modify your bond by submitting a rider to the BLM State Office where your bond is held. There is no special form required.

§ 3214.21 What must I do if I want to use a certificate of deposit to back my bond?

Your certificate of deposit must:

(a) Be issued by a Federally-insured financial institution authorized to do business in the United States;

(b) Include on its face the statement, ''This certificate cannot be redeemed by any party without approval by the Secretary of the Interior or the Secretary's delegate;'' and

(c) Be payable to the Department of the Interior, Bureau of Land Management.

§ 3214.22 What must I do if I want to use a letter of credit to back my bond?

Your letter of credit must:

(a) Be issued by a Federally-insured financial institution authorized to do business in the United States;

(b) Be payable to the Department of the Interior, Bureau of Land Management;

(c) Be irrevocable during its term and have an initial expiration date of no sooner than one year after the date we receive it;

(d) Be automatically renewable for a period of at least one year beyond the end of the current term, unless the issuing financial institution gives us written notice, at least 90 days before the letter of credit expires, that it will no longer renew the letter of credit; and

(e) Include a clause authorizing the Secretary of the Interior to demand immediate payment, in part or in full:

(1) If you do not meet your obligations under the requirements of § 3200.4; or

(2) Provide substitute security for a letter of credit which the issuer has stated it will not renew before the letter of credit expires.

Subpart 3215—Bond Release, Termination, and Collection

§ 3215.10 When may BLM collect against my bond?

If you fail to comply with the requirements listed at § 3200.4, we may collect money from the bond to correct your noncompliance. This amount can be as large as the face amount of the bond. Some examples of when we will collect against your bond are when you do not properly or in a timely manner:

(a) Plug and abandon a well;

(b) Reclaim the lease area;

(c) Pay outstanding royalties; or

(d) Pay assessed royalties to compensate for drainage.

§ 3215.11 Must I replace my bond after BLM collects against it?

If BLM collects against your bond, before you conduct any further operations you must either:

(a) Post a new bond equal to the value of the original bond; or

(b) Restore your existing bond to the original face amount.

§ 3215.12 What will BLM do if I do not restore the face amount or file a new bond?

If we collect against your bond and you do not restore it to the original face amount, we may shut in any well(s) or utilization facilities covered by that bond, and may terminate affected leases.

§ 3215.13 Will BLM terminate or release my bond?

(a) BLM does not cancel or terminate bonds. We may inform you that your existing bond is insufficient.

(b) The bond provider may terminate your bond provided it gives you and BLM 30-days notice. The bond provider remains responsible for obligations that accrued during the period of liability while the bond was in effect.

(c) BLM will release a bond, terminating all liability under that bond, if:

(1) The new bond that you file covers all existing liabilities and we accept it; or

(2) After a reasonable period of time, we determine that you paid all royalties, rents, penalties, and assessments, and satisfied all permit and lease obligations.

(d) If an adequate bond is not in place, do not conduct any operations until you provide a new bond which meets our requirements.

§ 3215.14 When BLM releases my bond, does that end my responsibilities?

When BLM releases your bond, we relinquish the security but we continue to hold the lessee or operator responsible for noncompliance with applicable requirements under the lease. Specifically, we do not waive any legal claim we may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), or other laws and regulations.

Subpart 3216—Transfers

§ 3216.10 What types of lease interests may I transfer?

You may transfer record title or operating rights, but you need BLM approval before your transfer is effective (see § 3216.21).

§ 3216.11 Where must I file a transfer request?

File your transfer in the BLM State Office that handles your lease.

§ 3216.12 When does a transferee take responsibility for lease obligations?

After BLM approves your transfer, the transferee is responsible for performing all lease obligations accruing after the date of the transfer, and for plugging and abandoning wells which exist and are not plugged and abandoned at the time of the transfer.

§ 3216.13 What are my responsibilities after I transfer my interest?

After you transfer an interest in a lease you are still responsible for rents, royalties, compensatory royalties, and other obligations that accrued before your transfer became effective. You must also plug and abandon any wells drilled or existing on the lease while you held your interest.

§ 3216.14 What filing fees and forms does a transfer require?

With each transfer request you must send BLM the correct form and pay the transfer fee required by this section. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit $225 with the application. Use the following chart to determine forms and fees:

Type of transfer	Form required?	Form No.	Number of copies	Filing transfer fee (per lease)
(a) Record Title	Yes	3000–3	2 executed copies	*
(b) Operating Rights	Yes	3000–3(a)	2 executed copies	*
(c) Estate Transfers	No	N/A	1 List of Leases	*
(d) Corporate Mergers	No	N/A	1 List of Leases	*
(e) Name Changes	No	N/A	1 List of Leases	*

*The applicable transfer fees are in the fee schedule in § 3000.12 of this chapter.

§ 3216.15 When must I file my transfer request?

(a) File a transfer request to transfer record title or operating rights within 90 days after you sign an agreement with the transferee. If BLM receives your request more than 90 days after signing, we may require you to re-certify that you still intend to complete the transfer.

(b) There is no specific time deadline for filing estate transfers, corporate mergers, and name changes. File them within a reasonable time.

§ 3216.16 Must I file separate transfer requests for each lease?

File two copies of a separate request for each lease for which you are transferring record title or operating rights. The only exception is if you are transferring more than one lease to the same transferee, in which case you file two copies of one transfer application.

§ 3216.17 Where must I file estate transfers, corporate mergers, and name changes?

(a) If you have posted a bond for any Federal lease, you must file estate transfers, corporate mergers, and name changes in the BLM State Office that maintains your bond.

(b) If you have not posted a bond, you must file estate transfers, corporate mergers and name changes in the State Office having jurisdiction over the lease.

§ 3216.18 How do I describe the lands in my lease transfer?

(a) If you are transferring an interest in your entire lease, you do not need to give BLM a legal description of the land.

(b) If you are transferring an interest in a portion of your lease, describe the lands that are transferred in the same way they are described in the lease.

§ 3216.19 May I transfer record title interest for less than 640 acres?

Except for direct use leases, you may transfer record title interest for less than 640 acres only if your transfer includes an irregular subdivision or all of the lands in your lease are in a section. We may make an exception to the minimum acreage requirements if it is necessary to conserve the resource.

§ 3216.20 When does a transfer segregate a lease?

If you transfer 100 percent of the record title interest in a portion of your lease, BLM will segregate the transferred portion from the original lease and give it a new serial number with the same terms and conditions as those in the original lease.

§ 3216.21 When is my transfer effective?

Your transfer is effective the first day of the month after we approve it.

§ 3216.22 Does BLM approve all transfer requests?

BLM will not approve a transfer if:

(a) The lease account is not in good standing;

(b) The transferee does not qualify to hold a lease under this part; or

(c) An adequate bond has not been provided.

Subpart 3217—Cooperative Agreements

§ 3217.10 What are unit agreements?

Under unit agreements, lessees unite with each other, or jointly or separately with others, in collectively adopting and operating under agreements to conserve the resources of any geothermal reservoir, field, or like area, or any part thereof,. BLM will only approve unit agreements that we determine are in the public interest. Unit agreement application procedures are provided in part 3280 of this title.

§ 3217.11 What are communitization agreements?

Under communitization agreements (also called drilling agreements), operators who cannot independently develop separate tracts due to well-spacing or well development programs may cooperatively develop such tracts. Lessees may ask BLM to approve a communitization agreement or, in some cases, we may require the lessees to enter into such an agreement.

§ 3217.12 What does BLM need to approve my communitization agreement?

For BLM to approve a communitization agreement, you must give us the following information:

(a) The location of the separate tracts comprising the drilling or spacing unit;

(b) How you will prorate production or royalties to each separate tract based on total acres involved;

(c) The name of each tract operator; and

(d) Provisions for protecting the interests of all parties, including the United States.

§ 3217.13 When does my communitization agreement go into effect?

(a) Your communitization agreement is effective when BLM approves and signs it.

(b) Before we approve the agreement:

(1) All parties must sign the agreement; and (2)(i) We must determine that the tracts cannot be independently developed; and

(ii) That the agreement is in the public interest.

§ 3217.14 When will BLM approve my drilling or development contract?

BLM may approve a drilling or development contract when:

(a) One or more geothermal lessees enter into the contract with one or more persons; or

(b) Lessees need the contract for regional exploration of geothermal resources;

(c) BLM has coordinated the review of the proposed contract with appropriate state agencies; and

(d) BLM determines that approval best serves or is necessary for the conservation of natural resources, public convenience or necessity, or the interests of the United States.

§ 3217.15 What does BLM need to approve my drilling or development contract?

For BLM to approve your drilling or development contract, you must send us:

(a) The contract and a statement of why you need it;

(b) A statement of all interests held by the contracting parties in that geothermal area or field;

(c) The type of operations and schedule set by the contract;

(d) A statement that the contract will not violate Federal antitrust laws by concentrating control over the production or sale of geothermal resources; and

(e) Any other information we may require to make a decision about the contract or to attach conditions of approval.

Subpart 3250—Exploration Operations—General

§ 3250.10 When do the exploration operations regulations apply?

(a) The exploration operations regulations contained in this subpart and subparts 3251 through 3256 of this part apply to geothermal exploration operations:

(1) On BLM-administered public lands, whether or not they are leased for geothermal resources; and

(2) On lands whose surface is managed by another Federal agency, where BLM has leased the subsurface geothermal resources and the lease operator wishes to conduct exploration. In this case, we will consult with the surface managing agency regarding surface use and reclamation requirements before we approve the exploration operations.

(b) These regulations do not apply to:

(1) Unleased land administered by another Federal agency;

(2) Unleased geothermal resources whose surface land is managed by another Federal agency;

(3) Privately owned land; or

(4) Casual use activities.

§ 3250.11 May I conduct exploration operations on my lease, someone else's lease, or unleased land?

(a) You may request BLM approval to explore any BLM-managed public lands open to geothermal leasing, even if the lands are leased to another person. A BLM-approved exploration permit does not give you exclusive rights.

(b) If you wish to conduct operations on your lease, you may do so after we have approved your Notice of Intent to Conduct Geothermal Resource Exploration Operations. If the lands are already leased, your operations may not unreasonably interfere with or endanger those other operations or other authorized uses, or cause unnecessary or undue degradation of the lands.

§ 3250.12 What general standards apply to exploration operations?

BLM-approved exploration operations must:

(a) Meet all operational and environmental standards;

(b) Protect public health, safety, and property;

(c) Prevent unnecessary impacts on surface and subsurface resources;

(d) Be conducted in a manner consistent with the principles of multiple use; and

(e) Comply with the requirements of § 3200.4.

§ 3250.13 What additional BLM orders or instructions govern exploration?

BLM may issue the following types of orders or instructions:

(a) Geothermal resource operational orders that contain detailed requirements of nationwide applicability;

(b) Notices to lessees that contain detailed requirements on a statewide or regional basis;

(c) Other orders and instructions specific to a field or area;

(d) Conditions of approval contained in an approved Notice of Intent; and

(e) Verbal orders that BLM will confirm in writing.

§ 3250.14 What types of operations may I propose in my application to conduct exploration?

(a) You may propose any activity fitting the definition of ''exploration operations'' in § 3200.1. Submit Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations, together with the information required under § 3251.11, and BLM will review your proposal.

(b) The exploration operations regulations do not address drilling wells intended for production or injection, which is covered in subpart 3260 of this part, or geothermal resources utilization, which is covered in subpart 3270 of this part.

Subpart 3251—Exploration Operations: Getting BLM Approval

§ 3251.10 Do I need a permit before I start exploration operations?

BLM must approve a Notice of Intent to Conduct Geothermal Resource Exploration Operations (NOI) before you conduct exploration operations. The approved NOI, including any necessary conditions for approval, constitutes your permit.

§ 3251.11 What information is in a complete Notice of Intent to Conduct Geothermal Resource Exploration Operations application?

To obtain approval of exploration operations on BLM-managed lands, your application must:

(a) Include a complete and signed Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations that describes the lands you wish to explore;

(b) For operations other than drilling temperature gradient wells, describe your exploration plans and procedures, including the approximate starting and ending dates for each phase of operations;

(c) For drilling temperature gradient wells, describe your drilling and completion procedures, and include, for each well or for several wells you propose to drill in an area of geologic and environmental similarity:

(1) A detailed description of the equipment, materials, and procedures you will use;

(2) The depth of each well;

(3) The casing and cementing program;

(4) The circulation media (mud, air, foam, etc.);

(5) A description of the logs that you will run;

(6) A description and diagram of the blowout prevention equipment you will use during each phase of drilling;

(7) The expected depth and thickness of fresh water zones;

(8) Anticipated lost circulation zones;

(9) Anticipated temperature gradient in the area;

(10) Well site layout and design;

(11) Existing and planned access roads or ancillary facilities; and

(12) Your source of drill pad and road building material and water supply.

(d) Show evidence of bond coverage (see § 3251.15);

(e) Estimate how much surface disturbance your exploration may cause;

(f) Describe the proposed measures you will take to protect the environment and other resources;

(g) Describe methods to reclaim the surface; and

(h) Include all other information BLM may require.

§ 3251.12 What action will BLM take on my Notice of Intent to Conduct Geothermal Resource Exploration Operations?

(a) When BLM receives your Notice of Intent to Conduct Geothermal Resource Exploration Operations, we will make sure it is complete and signed, and review it for compliance with the requirements of § 3200.4.

(b) If the proposed operations are located on lands described under § 3250.10(a)(2), we will consult with the Federal surface management agency before approving your Notice of Intent.

(c) We will check your Notice of Intent for technical adequacy and we may require additional information.

(d) We will notify you if we need more information to process your Notice of Intent, and suspend the review of your Notice of Intent until we receive the information.

(e) After our review, we will notify you whether we approved or denied your Notice of Intent and of any conditions of approval.

§ 3251.13 Once I have an approved Notice of Intent, how can I change my exploration operations?

Send BLM a complete and signed Form 3260–3, Geothermal Sundry Notice, which fully describes the requested changes. Do not proceed with the change in operations until you receive written approval from BLM.

§ 3251.14 Do I need a bond for conducting exploration operations?

(a) You must not start any exploration operations on BLM-managed lands until we approve your bond. You may meet the requirement for an exploration bond in two ways:

(1) If you have an existing nationwide or statewide oil and gas exploration bond, provide a rider in an amount we have specified to include geothermal resources exploration operations; or

(2) If you must file a new bond for geothermal exploration, the minimum amounts are:

(i) $5,000 for a single operation;

(ii) $25,000 for all of your operations within a state;

(iii) $50,000 for all of your operations on public lands nationwide.

(b) See subparts 3214 and 3215 of this part for additional details on bonding procedures.

§ 3251.15 When will BLM release my bond?

BLM will release your bond after you request it and we determine that you have:

(a) Plugged and abandoned all wells;

(b) Reclaimed the land and, if necessary, resolved other environmental, cultural, scenic or recreational issues; and

(c) Complied with the requirements of § 3200.4.

Subpart 3252—Conducting Exploration Operations

§ 3252.10 What operational standards apply to my exploration operations?

You must keep exploration operations under control at all times by:

(a) Conducting training during your operation which ensures your personnel are capable of performing emergency procedures quickly and effectively;

(b) Using properly maintained equipment; and

(c) Using operational practices that allow for quick and effective emergency response.

§ 3252.11 What environmental requirements must I meet when conducting exploration operations?

(a) You must conduct your exploration operations in a manner that:

(1) Protects the quality of surface and subsurface waters, air, and other natural resources, including wildlife, soil, vegetation, and natural history;

(2) Protects the quality of cultural, scenic and recreational resources;

(3) Accommodates other land uses, as BLM deems necessary; and

(4) Minimizes noise.

(b) You must remove or, with our permission, properly store all equipment and materials not in use.

(c) You must provide and use pits, tanks, and sumps of adequate capacity. They must be designed to retain all materials and fluids resulting from drilling temperature gradient wells or other operations, unless we have specified otherwise in writing. When they are no longer needed, you must properly abandon pits and sumps in accordance with your exploration permit.

(d) BLM may require you to submit a contingency plan describing procedures to protect public health, safety, property and the environment.

§ 3252.12 How deep may I drill a temperature gradient well?

(a) You may drill a temperature gradient well to any depth that we approve in your exploration permit or sundry notice. In all cases, you may not flow test the well or perform injection tests of the well unless you follow the procedures for geothermal drilling operations in subparts 3260 through 3267 of this part.

(b) BLM may modify your permitted depth at any time before or during drilling, if we determine that the bottom hole temperature or other information indicates that drilling to the original permitted depth could directly encounter the geothermal resource or create risks to public health, safety, property, the environment, or other resources.

§ 3252.13 How long may I collect information from my temperature gradient well?

You may collect information from your temperature gradient well for as long as your permit allows.

§ 3252.14 How must I complete a temperature gradient well?

Complete temperature gradient wells to allow for proper abandonment, and to prevent interzonal migration of fluids. Cap all tubing when not in use.

§ 3252.15 When must I abandon a temperature gradient well?

When you no longer need it, or when BLM requires you to.

§ 3252.16 How must I abandon a temperature gradient well?

(a) Before abandoning your well, submit a complete and signed Sundry Notice, Form 3260–3, describing how you plan to abandon wells and reclaim the surface. Do not begin abandoning wells or reclaiming the surface until BLM approves your Sundry Notice.

(b) You must plug and abandon your well for permanent prevention of interzonal migration of fluids and migration of fluids to the surface. You must reclaim your well location according to the terms of BLM approvals and orders.

Subpart 3253—Reports: Exploration Operations

§ 3253.10 Must I share with BLM the data I collect through exploration operations?

(a) For exploration operations on your geothermal lease, you must submit all data you obtain as a result of the operations with a signed notice of completion of exploration operations under § 3253.11, unless we approve a later submission.

(b) For exploration operations on unleased lands or on leased lands where you are not the lessee or unit operator, you are not required to submit data. However, if you want your exploration operations to count toward your diligent exploration expenditure requirement (see § 3210.13), or if you are making significant expenditures to extend your lease (see § 3208.14), you must send BLM the resulting data under the rules of those sections.

§ 3253.11 Must I notify BLM when I have completed my exploration operations?

After you complete exploration operations, send to BLM a complete and signed notice of completion of exploration operations, describing the exploration operations, well history, completion and abandonment procedures, and site reclamation measures. You must send this to BLM within 30 days after you:

(a) Complete any geophysical exploration operations;

(b) Complete the drilling of temperature gradient well(s) approved under your approved Notice of Intent to conduct exploration;

(c) Plug and abandon a temperature gradient well; and

(d) Plug shot holes and reclaim all exploration sites.

Subpart 3254—Inspection, Enforcement, and Noncompliance for Exploration Operations

§ 3254.10 May BLM inspect my exploration operations?

BLM may inspect your exploration operations to ensure compliance with the requirements of § 3200.4 and the regulations in this subpart.

§ 3254.11 What will BLM do if my exploration operations are not in compliance with my permit, other BLM approvals or orders, or the regulations in this subpart?

(a) BLM will issue you a written Incident of Noncompliance and direct you to correct the problem within a set time. If the noncompliance continues or is serious in nature, we will take one or more of the following actions:

(1) Correct the problem at your expense;

(2) Direct you to modify or shut down your operations; or

(3) Collect all or part of your bond.

(b) We may also require you to take actions to prevent unnecessary impacts on the lands. If so, we will notify you of the nature and extent of any required measures and the time you have to complete them.

(c) Noncompliance may result in BLM terminating your lease, if appropriate under §§ 3213.17 through 3213.19.

Subpart 3255—Confidential, Proprietary Information

§ 3255.10 Will BLM disclose information I submit under these regulations?

All Federal and Indian data and information submitted to the BLM are subject to part 2 of this title. Part 2 includes the regulations of the Department of the Interior covering public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from disclosure under part 2 may be made available for inspection without a Freedom of Information Act (FOIA) request.

§ 3255.11 When I submit confidential, proprietary information, how can I help ensure it is not available to the public?

When you submit data and information that you believe to be exempt from disclosure by 43 CFR part 2, you must clearly mark each page that you believe contains confidential information. BLM will keep all data and information confidential to the extent allowed by 43 CFR 2.13(c).

§ 3255.12 How long will information I give BLM remain confidential or proprietary?

The FOIA (5 U.S.C. 552) does not provide a finite period of time during which information may be exempt from public disclosure. BLM will review each situation individually and in accordance with part 2 of this title.

§ 3255.13 How will BLM treat Indian information submitted under the Indian Mineral Development Act?

Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe:

(a) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(b) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to:

(1) The terms, conditions, or financial return to the Indian parties;

(2) The extent, nature, value, or disposition of the Indian mineral resources; or

(3) The production, products, or proceeds thereof.

§ 3255.14 How will BLM administer information concerning other Indian minerals?

For information concerning Indian minerals not covered by § 3255.13, BLM will withhold such records as may be withheld under an exemption to the FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation.

§ 3255.15 When will BLM consult with Indian mineral owners when information concerning their minerals is the subject of a FOIA request?

(a) We use the standards and procedures of § 2.15(d) of this title before making a decision about the applicability of FOIA exemption 4 to information obtained from a person outside the United States Government.

(b) BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure. BLM will issue this notice following consultation with a submitter under § 2.15(d) of this title if:

(1) BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; and

(2) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

Subpart 3256—Exploration Operations Relief and Appeals

§ 3256.10 How do I request a variance from BLM requirements that apply to my exploration operations?

(a) You may submit a request for a variance for your exploration operations from any requirement in § 3200.4. Your request must include enough information to explain:

(1) Why you cannot comply with the regulatory requirement; and

(2) Why you need the variance to control your well, conserve natural resources, or protect public health and safety, property, or the environment.

(b) BLM may approve your request orally or in writing. If we give you an oral approval, we will follow up with written confirmation.

§ 3256.11 How may I appeal a BLM decision regarding my exploration operations?

You may appeal a BLM decision regarding your exploration operations in accordance with § 3200.5.

Subpart 3260—Geothermal Drilling Operations—General

§ 3260.10 What types of geothermal drilling operations are covered by these regulations?

(a) The regulations in subparts 3260 through 3267 of this part establish permitting and operating procedures for drilling wells and conducting related activities for the purposes of performing flow tests, producing geothermal fluids, or injecting fluids into a geothermal reservoir. These subparts also address redrilling, deepening, plugging back, and other subsequent well operations.

(b) The operations regulations in subparts 3260 through 3267 of this part do not address conducting exploration operations, which are covered in subpart 3250 of this part, or geothermal resources utilization, which is covered in subpart 3270 of this part.

§ 3260.11 What general standards apply to my drilling operations?

Your drilling operations must:

(a) Meet all environmental and operational standards;

(b) Prevent unnecessary impacts on surface and subsurface resources;

(c) Conserve geothermal resources and minimize waste;

(d) Protect public health, safety, and property; and

(e) Comply with the requirements of § 3200.4.

§ 3260.12 What other orders or instructions may BLM issue?

BLM may issue:

(a) Geothermal resource operational orders for detailed requirements that apply nationwide;

(b) Notices to Lessees for detailed requirements on a statewide or regional basis;

(c) Other orders and instructions specific to a field or area;

(d) Permit conditions of approval; and

(e) Oral orders, which will be confirmed in writing.

Subpart 3261—Drilling Operations: Getting a Permit

§ 3261.10 How do I get approval to begin well pad construction?

(a) If you do not have an approved geothermal drilling permit, Form 3260–2, apply using a completed and signed Sundry Notice, Form 3260–3, to build well pads and access roads. Send us a complete operations plan (see § 3261.12) and an acceptable bond with your Sundry Notice. You may start well pad construction after we approve your Sundry Notice.

(b) If you already have an approved drilling permit and you have provided an acceptable bond, you do not need any further permission from BLM to start well pad construction, unless you intend to change something in the approved permit. If you propose a change in an approved permit, send us a completed and signed Sundry Notice so we may review your proposed change. Do not proceed with the change until we approve your Sundry Notice.

§ 3261.11 How do I apply for approval of drilling operations and well pad construction?

(a) Send to BLM:

(1) A completed and signed drilling permit application, Form 3260–2;

(2) A complete operations plan (§ 3261.12);

(3) A complete drilling program (§ 3261.13); and

(4) An acceptable bond (§ 3261.18).

(b) Do not start any drilling operations until after BLM approves the permit.

§ 3261.12 What is an operations plan?

An operations plan describes how you will drill for and test the geothermal resources covered by your lease. Your plan must tell BLM enough about your proposal to allow us to assess the environmental impacts of your operations. This information should generally include:

(a) Well pad layout and design;

(b) A description of existing and planned access roads;

(c) A description of any ancillary facilities;

(d) The source of drill pad and road building material;

(e) The water source;

(f) A statement describing surface ownership;

(g) A description of procedures to protect the environment and other resources;

(h) Plans for surface reclamation; and

(i) Any other information that BLM may require.

§ 3261.13 What is a drilling program and how do I apply for drilling program approval?

(a) A drilling program describes all the operational aspects of your proposal to drill, complete and test a well.

(b) Send to BLM:

(1) A detailed description of the equipment, materials, and procedures you will use;

(2) The proposed/anticipated depth of the well;

(3) If you plan to directionally drill your well, also send us:

(i) The proposed bottom hole location and distances from the nearest section or tract lines;

(ii) The kick-off point;

(iii) The direction of deviation;

(iv) The angle of build-up and maximum angle; and

(v) Plan and cross section maps indicating the surface and bottom hole locations;

(4) The casing and cementing program;

(5) The circulation media (mud, air, foam, etc.);

(6) A description of the logs that you will run;

(7) A description and diagram of the blowout prevention equipment you will use during each phase of drilling;

(8) The expected depth and thickness of fresh water zones;

(9) Anticipated lost circulation zones;

(10) Anticipated reservoir temperature and pressure;

(11) Anticipated temperature gradient in the area;

(12) A plat certified by a licensed surveyor showing the surveyed surface location and distances from the nearest section or tract lines;

(13) Procedures and durations of well testing; and

(14) Any other information we may require.

§ 3261.14 When must I give BLM my operations plan?

Send us a complete operations plan before you begin any surface disturbance on a lease. You do not need to submit an operations plan for subsequent well operations or altering existing production equipment, unless these activities will cause more surface disturbance than originally approved, or we notify you that you must submit an operations plan. Do not start any activities that will result in surface disturbance until we approve your permit or Sundry Notice.

§ 3261.15 Must I give BLM my drilling permit application, drilling program, and operations plan at the same time?

You may submit your completed and signed drilling permit application and complete drilling program and operations plan either together or separately.

(a) If you submit them together and we approve your drilling permit, the approved drilling permit will authorize both the pad construction and the drilling and testing of the well.

(b) If you submit the operations plan separately from the drilling permit application and program, you must:

(1) Submit the operations plan before the drilling permit application and drilling program to allow BLM time to comply with NEPA; and

(2) Submit a completed and signed Sundry Notice for well pad and access road construction. Do not begin construction until we approve your Sundry Notice.

§ 3261.16 Can my operations plan, drilling permit, and drilling program apply to more than one well?

(a) Your operations plan and drilling program can sometimes be combined to cover several wells, but your drilling permit cannot. To include more than one well in your operations plan, give us adequate information for all well sites, and we will combine your plan to cover those well sites that are in areas of similar geology and environment.

(b) Your drilling program may also apply to more than one well, provided you will drill the wells in the same manner, and you expect to encounter similar geologic and reservoir conditions.

(c) You must submit a separate geothermal drilling permit application for each well.

§ 3261.17 How do I amend my operations plan or drilling permit?

(a) If BLM has not yet approved your operations plan or drilling permit, send us your amended plan and completed and signed permit application.

(b) To amend an approved operations plan or drilling permit, submit a completed and signed Sundry Notice describing your proposed change. Do not start any amended operations until after BLM approves your drilling permit or Sundry Notice.

§ 3261.18 Do I need to file a bond with BLM before I build a well pad or drill a well?

Before starting any operation, you must:

(a) File with BLM either a surety or personal bond in the following minimum amount:

(1) $10,000 for a single lease;

(2) $50,000 for all of your operations within a state; or

(3) $150,000 for all of your operations nationwide;

(b) Get our approval of your surety or personal bond; and

(c) To cover any drilling operations on all leases committed to a unit, either submit a bond for that unit in an amount we specify, or provide a rider to a statewide or nationwide bond specifically covering the unit in an amount we specify.

(d) See subparts 3214 and 3215 of this part for additional details on bonding procedures.

§ 3261.19 When will BLM release my bond?

BLM will release your bond after you request it and we determine that you have:

(a) Plugged and abandoned all wells;

(b) Reclaimed the surface and other resources; and

(c) Met all the requirements of § 3200.4.

§ 3261.20 How will BLM review applications submitted under this subpart and notify me of its decision?

(a) When we receive your operations plan, we will make sure it is complete and review it for compliance with the requirements of § 3200.4.

(b) If another Federal agency manages the surface of your lease, we will consult with them before we approve your drilling permit.

(c) We will review your drilling permit and drilling program or your Sundry Notice for well pad construction, to make sure they conform with your operations plan and any mitigation measures we developed while reviewing your plan.

(d) We will check your drilling permit and drilling program for technical adequacy and we may require additional information.

(e) We will check your drilling permit for compliance with the requirements of § 3200.4.

(f) If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information.

(g) After our review, we will notify you as to whether your permit has been approved or denied, as well as any conditions of approval.

§ 3261.21 How do I get approval to change an approved drilling operation?

(a) Send BLM a Sundry Notice, form 3260–3, describing the proposed changes. Do not proceed with the changes until we have approved them in writing, except as provided in paragraph (c) of this section. If your operations such as redrilling, deepening, drilling a new directional leg, or plugging back a well would significantly change your approved permit, BLM may require you to send us a new drilling permit (see 43 CFR 3261.13). A significant change would be, for example, redrilling the well to a completely different target, especially a target in an unknown area.

(b) If your changed drilling operation would cause additional surface disturbance, we may also require you to submit an amended operations plan.

(c) If immediate action is required to properly continue drilling operations, or to protect public health, safety, property or the environment, BLM may provide oral approval to change an approved drilling operation. However, you must submit a written Sundry Notice within 48 hours after we orally approve your change.

§ 3261.22 How do I get approval for subsequent well operations?

Send BLM a Sundry Notice describing your proposed operation. For some routine work, such as cleanouts, surveys, or general maintenance (see § 3264.11(b)), we may waive the Sundry Notice requirement. Contact your local BLM office to ask about waivers for subsequent well operations. Unless you receive a waiver, you must submit a Sundry Notice. Do not start your operations until we grant a waiver or approve the Sundry Notice.

Subpart 3262—Conducting Drilling Operations

§ 3262.10 What operational requirements must I meet when drilling a well?

(a) When drilling a well, you must keep the well under control at all times by:

(1) Conducting training during your operation to maintain the capability of your personnel to perform emergency procedures quickly and effectively;

(2) Using properly maintained equipment; and

(3) Using operational practices that allow for quick and effective emergency response.

(b) You must use sound engineering principles and take into account all pertinent data when:

(1) Selecting and using drilling fluid types and weights;

(2) Designing and implementing a system to control fluid temperatures;

(3) Designing and using blowout prevention equipment; and

(4) Designing and implementing a casing and cementing program.

(c) Your operation must always comply with the requirements of § 3200.4.

§ 3262.11 What environmental requirements must I meet when drilling a well?

(a) You must conduct your operations in a manner that:

(1) Protects the quality of surface and subsurface water, air, natural resources, wildlife, soil, vegetation, and natural history;

(2) Protects the quality of cultural, scenic, and recreational resources;

(3) Accommodates, as necessary, other land uses;

(4) Minimizes noise; and

(5) Prevents property damage and unnecessary or undue degradation of the lands.

(b) You must remove or, with BLM's approval, properly store all equipment and materials that are not in use.

(c) You must retain all fluids from drilling and testing the well in properly designed pits, sumps, or tanks.

(d) When you no longer need a pit or sump, you must abandon it and restore the site as we direct you to.

(e) BLM may require you to give us a contingency plan showing how you will protect public health and safety, property, and the environment.

§ 3262.12 Must I post a sign at every well?

Yes. Before you begin drilling a well, you must post a sign in a conspicuous place and keep it there throughout operations until the well site is reclaimed. Put the following information on the sign:

(a) The lessee or operator's name;

(b) Lease serial number;

(c) Well number; and

(d) Well location described by township, range, section, quarter-quarter section or lot.

§ 3262.13 May BLM require me to follow a well spacing program?

BLM may require you to follow a well spacing program if we determine that it is necessary for proper development. If we require well spacing, we will consider the following factors when we set well spacing:

(a) Hydrologic, geologic, and reservoir characteristics of the field, minimizing well interference;

(b) Topography;

(c) Interference with multiple use of the land; and

(d) Environmental protection, including ground water.

§ 3262.14 May BLM require me to take samples or perform tests and surveys?

(a) BLM may require you to take samples or to test or survey the well to determine:

(1) The well's mechanical integrity;

(2) The identity and characteristics of formations, fluids or gases;

(3) Presence of geothermal resources, water, or reservoir energy;

(4) Quality and quantity of geothermal resources;

(5) Well bore angle and direction of deviation;

(6) Formation, casing, or tubing pressures;

(7) Temperatures;

(8) Rate of heat or fluid flow; and

(9) Any other necessary well information.

(b) See § 3264.11 for information reporting requirements.

Subpart 3263—Well Abandonment

§ 3263.10 May I abandon a well without BLM's approval?

(a) You must have a BLM-approved Sundry Notice documenting your plugging and abandonment program before you start abandoning any well.

(b) You must also notify the local BLM office before you begin abandonment activities, so that we may witness the work. Contact your local BLM office before starting to abandon your well to find out what notification we need.

§ 3263.11 What information must I give BLM to approve my Sundry Notice for abandoning a well?

Send us a Sundry Notice with:

(a) All the information required in the well completion report (see § 3264.10), unless we already have that information;

(b) A detailed description of the proposed work, including:

(1) Type, depth, length, and interval of plugs;

(2) Methods you will use to verify the plugs (tagging, pressure testing, etc.);

(3) Weight and viscosity of mud that you will use in the uncemented portions;

(4) Perforating or removing casing; and

(5) Restoring the surface; and

(c) Any other information that we may require.

§ 3263.12 How will BLM review my Sundry Notice to abandon my well and notify me of their decision?

(a) When BLM receives your Sundry Notice, we will make sure it is complete and review it for compliance with the requirements of § 3200.4. We will notify you if we need more information or require additional procedures. If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information. If we approve your Sundry Notice, we will send you an approved copy once our review is complete. Do not start abandonment of the well until we approve your Sundry Notice.

(b) BLM may orally approve plugging procedures for a well requiring immediate action. If we do, you must submit the information required in § 3263.11 within 48 hours after we give oral approval.

§ 3263.13 What must I do to restore the site?

You must remove all equipment and materials and restore the site according to the terms of your permit or other BLM approval.

§ 3263.14 May BLM require me to abandon a well?

If we determine that your well is no longer needed for geothermal resource production, injection, or monitoring, or if we determine that the well is not mechanically sound, BLM may order you to abandon the well. In either case, if you disagree you may explain to us why the well should not be abandoned. We will consider your reasons before we issue any final order.

§ 3263.15 May I abandon a producible well?

(a) You may abandon a producible well only after you receive BLM's approval. Before abandoning a producing well, send BLM the information listed in § 3263.11. We may also require you to explain why you want to abandon the well.

(b) BLM will deny your request if we determine that the well is needed:

(1) To protect a Federal lease from drainage; or

(2) To protect the environment or other resources of the United States.

Subpart 3264—Reports—Drilling Operations

§ 3264.10 What must I submit to BLM when I complete a well?

You must submit a Geothermal Well Completion Report, Form 3260–4, within 30 days after you complete a well. Your report must include the following:

(a) A complete, chronological well history;

(b) A copy of all logs;

(c) Copies of all directional surveys; and

(d) Copies of all mechanical, flow, reservoir, and other test data.

§ 3264.11 What must I submit to BLM after I finish subsequent well operations?

(a) Submit to BLM a subsequent well operations report within 30 days after completing operations. At a minimum, this report must include:

(1) A complete, chronological history of the work done;

(2) A copy of all logs;

(3) Copies of all directional surveys;

(4) The results of all sampling, tests, or surveys we require you to make (see § 3262.14);

(5) Copies of all mechanical, flow, reservoir, and other test data; and

(6) A statement of whether you achieved your goals. For example, if the well was acidized to increase production, state whether the production rate increased when you put the well back on line.

(b) We may waive this reporting requirement for work we determine to

be routine, such as cleanouts, surveys, or general maintenance. To request a waiver, contact BLM. If you do not receive a waiver, you must submit the report.

§ 3264.12 What must I submit to BLM after I abandon a well?

Send us a well abandonment report within 30 days after you abandon a well. If you plan to restore the site at a later date, you may submit a separate report within 30 days after completing site restoration. The well abandonment report must contain:

(a) A complete chronology of all work done;

(b) A description of each plug, including:

(1) Type and amount of cement used;

(2) Depth that the drill pipe or tubing was run to set the plug;

(3) Depth to top of plug; and

(4) If the plug was verified, whether it was done by tagging or pressure testing; and

(c) A description of surface restoration procedures.

§ 3264.13 What drilling and operational records must I maintain for each well?

You must keep the following information for each well, and make it available for BLM to inspect, upon request:

(a) A complete and accurate drilling log, in chronological order;

(b) All other logs;

(c) Water or steam analyses;

(d) Hydrologic or heat flow tests;

(e) Directional surveys;

(f) A complete log of all subsequent well operations, such as cementing, perforating, acidizing, and well cleanouts; and

(g) Any other information regarding the well that could affect its status.

§ 3264.14 How do I notify BLM of accidents occurring on my lease?

You must orally inform us of all accidents that affect operations or create environmental hazards within 24 hours of the accident. When you contact us, we may require you to submit a written report fully describing the incident.

Subpart 3265—Inspection, Enforcement, and Noncompliance for Drilling Operations

§ 3265.10 What part of my drilling operations may BLM inspect?

(a) BLM may inspect all of your Federal drilling operations regardless of surface ownership. We will inspect your operations for compliance with the requirements of § 3200.4.

(b) BLM may inspect all of your maps, well logs, surveys, records, books, and accounts related to your Federal drilling operations.

§ 3265.11 What records must I keep available for inspection?

You must keep a complete record of all aspects of your activities related to your drilling operation available for our inspection. Store these records in a place which makes them conveniently available to us. Examples of records which we may inspect include:

(a) Well logs, maps;

(b) Records, books, and accounts related to your Federal drilling operations;

(b) Directional surveys;

(c) Records pertaining to casing type and setting;

(d) Records pertaining to formations penetrated;

(e) Well test results;

(f) Records pertaining to characteristics of the geothermal resource;

(g) Records pertaining to emergency procedure training; and

(h) Records pertaining to operational problems.

§ 3265.12 What will BLM do if my operations do not comply with my permit and applicable regulations?

(a) We will issue you a written Incident of Noncompliance, directing you to take required corrective action within a specific time period. If the noncompliance continues or is of a serious nature, we will take one or more of the following actions:

(1) Enter your lease, and correct any deficiencies at your expense;

(2) Collect all or part of your bond;

(3) Direct modification or shutdown of your operations; and

(4) Take other enforcement action under subpart 3213 against a lessee who is ultimately responsible for noncompliance.

(b) Noncompliance may result in BLM terminating your lease. See §§ 3213.17 through 3213.19.

Subpart 3266—Confidential, Proprietary Information

§ 3266.10 Will BLM disclose information I submit under these regulations?

All Federal and Indian data and information submitted to the BLM are subject to part 2 of this title. Part 2 includes the Department of the Interior regulations covering public disclosure of data and information contained in Department records. Certain mineral information not protected from disclosure under part 2 of this title may be made available for inspection without a Freedom Of Information Act (FOIA) request. BLM will not treat surface location, surface elevation, or well status information as confidential.

§ 3266.11 When I submit confidential, proprietary information, how can I help ensure that it is not available to the public?

When you submit data and information that you believe to be exempt from disclosure by part 2 of this title, you must clearly mark each page that you believe contains confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

§ 3266.12 How long will information that I give BLM remain confidential or proprietary?

The FOIA does not provide a finite period of time during which information may be exempt from public disclosure. BLM reviews each situation individually and in accordance with part 2 of this title.

Subpart 3267—Geothermal Drilling Operations Relief and Appeals

§ 3267.10 How do I request a variance from BLM requirements that apply to my drilling operations?

(a) You may file a request for a variance from the requirements of § 3200.4 for your approved drilling operations. Your request must include enough information to explain:

(1) Why you cannot comply with the requirements of § 3200.4; and

(2) Why you need the variance to control your well, conserve natural resources, or protect public health and safety, property, or the environment.

(b) We may approve your request orally or in writing. If BLM gives you an oral approval, we will follow up with written confirmation.

§ 3267.11 How may I appeal a BLM decision regarding my drilling operations?

You may appeal our decisions regarding your drilling operations in accordance with § 3200.5.

Subpart 3270—Utilization of Geothermal Resources—General

§ 3270.10 What types of geothermal operations are governed by these utilization regulations?

(a) The regulations in subparts 3270 through 3279 of this part cover the permitting and operating procedures for the utilization of geothermal resources. This includes:

(1) Electrical generation facilities;

(2) Direct use facilities;

(3) Related utilization facility operations;

(4) Actual and allocated well field production and injection; and

(5) Related well field operations.

(b) The utilization regulations in subparts 3270 through 3279 of this part do not address conducting exploration operations, which is covered in subpart 3250 of this part, or drilling wells intended for production or injection, which is covered in subpart 3260 of this part.

§ 3270.11 What general standards apply to my utilization operations?

Your utilization operations must:

(a) Meet all operational and environmental standards;

(b) Prevent unnecessary impacts on surface and subsurface resources;

(c) Result in the maximum ultimate recovery;

(d) Result in the beneficial use of geothermal resources, with minimum waste;

(e) Protect public health, safety, and property; and

(f) Comply with the requirements of § 3200.4.

§ 3270.12 What other orders or instructions may BLM issue?

BLM may issue:

(a) Geothermal resource operational orders, for detailed requirements that apply nationwide;

(b) Notices to lessees, for detailed requirements on a statewide or regional basis;

(c) Other orders and instructions specific to a field or area;

(d) Permit conditions of approval; and

(e) Oral orders, which BLM will confirm in writing.

Subpart 3271—Utilization Operations: Getting a Permit

§ 3271.10 What do I need to start preparing a site and building and testing a utilization facility on Federal land leased for geothermal resources?

In order to use Federal land to produce geothermal power, you must obtain a site license and construction permit from BLM before you start preparing the site. Send BLM a plan that shows what you want to do, and draft a proposed site license agreement that you think is fair and reasonable. We will review your proposal and decide whether to give you a permit and license to proceed with work on the site.

§ 3271.11 Who may apply for a permit to build a utilization facility?

The lessee, the facility operator, or the unit operator may apply to build a utilization facility.

§ 3271.12 What do I need to start preliminary site investigations that may disturb the surface?

(a) You must:

(1) Fully describe your proposed operations in a Sundry Notice; and

(2) File a bond meeting the requirements of either § 3251.14 or § 3273.19. See subparts 3214 and 3215 of this part for additional details on bonding procedures.

(b) Do not begin the site investigation or surface disturbing activity until BLM approves your Sundry Notice and bond.

§ 3271.13 How do I obtain approval to build pipelines and facilities connecting the well field to utilization facilities not located on Federal lands leased for geothermal resources?

Before constructing pipelines and well field facilities on Federal lands leased for geothermal resources, you as lessee, unit operator, or facility operator must submit to BLM a utilization plan and facility construction permit addressing any pipelines or facilities. Do not start construction of your pipelines or facilities until BLM approves your facility construction permit.

§ 3271.14 What do I need to do to start building and testing a utilization facility if it is not located on Federal lands leased for geothermal resources?

(a) You do not need a BLM permit to construct a facility located on either:

(1) Private land; or

(2) Lands where the surface is privately owned and BLM has leased the underlying Federal geothermal resources, when the facility will utilize Federal geothermal resources.

(b) Before testing a utilization facility that is not located on Federal lands leased for geothermal resources, send us a Sundry Notice describing the testing schedule and the quantity of Federal geothermal resources you expect to be delivered to the facility during the testing. Do not start delivering Federal geothermal resources to the facility until we approve your Sundry Notice.

§ 3271.15 How do I get a permit to begin commercial operations?

Before using Federal geothermal resources, you as lessee, operator, or facility operator must send us a completed commercial use permit (see § 3274.11). This also applies when you use Federal resources allocated through any form of agreement. Do not start any commercial use operations until BLM approves your commercial use permit.

Subpart 3272—Utilization Plans and Facility Construction Permits?

§ 3272.10 What must I submit to BLM in my utilization plan?

Submit to BLM an application describing:

(a) The proposed facilities as set out in § 3272.11; and

(b) The anticipated environmental impacts and how you propose to mitigate those impacts, as set out at § 3272.12.

§ 3272.11 How do I describe the proposed utilization facility?

Your submission must include:

(a) A generalized description of all proposed structures and facilities, including their size, location, and function;

(b) A generalized description of proposed facility operations, including estimated total production and injection rates; estimated well flow rates, pressures, and temperatures; facility net and gross electrical generation; and, if applicable, interconnection with other utilization facilities. If it is a direct use facility, send us the information we need to determine the amount of resource utilized;

(c) A contour map of the entire utilization site, showing production and injection well pads, pipeline routes, facility locations, drainage structures, existing and planned access, and lateral roads;

(d) A description of site preparation and associated surface disturbance, including the source for site or road building materials, amounts of cut and fill, drainage structures, analysis of all site evaluation studies prepared for the site(s), and a description of any additional tests, studies, or surveys which are planned to assess the geologic suitability of the site(s);

(e) The source, quality, and proposed consumption rate of water to be used during facility operations, and the source and quantity of water to be used during facility construction;

(f) The methods for meeting air quality standards during facility construction and operation, especially standards concerning non-condensable gases;

(g) An estimated number of personnel needed during construction and operation of the facility;

(h) A construction schedule;

(i) A schedule for testing of the facility and/or well equipment, and for the start of commercial operations;

(j) A description of architectural landscaping or other measures to minimize visual impacts; and

(k) Any additional information or data that we may require.

§ 3272.12 What environmental protection measures must I include in my utilization plan?

(a) Describe, at a minimum, your proposed measures to:

(1) Prevent or control fires;

(2) Prevent soil erosion;

(3) Protect surface or ground water;
(4) Protect fish and wildlife;
(5) Protect cultural, visual, and other natural resources;
(6) Minimize air and noise pollution; and
(7) Minimize hazards to public health and safety during normal operations.

(b) If BLM requires it, you must also describe how you will monitor your facility operations to ensure that they comply with the requirements of § 3200.4, and applicable noise, air, and water quality standards, at all times. We will consult with other involved surface management agencies, if any, regarding monitoring requirements. You must also include provisions for monitoring other environmental parameters we may require.

(c) Based on what level of impacts that BLM finds your operations may cause, we may require you to collect data concerning existing air and water quality, noise, seismicity, subsidence, ecological systems, or other environmental information for up to one year before you begin operating. BLM must approve your data collection methodologies, and will consult with any other surface managing agencies involved.

(d) You must also describe how you will abandon utilization facilities and restore the site, in order to comply with the requirements of § 3200.4.

(e) Finally, you must submit any additional information or data that BLM may require.

§ 3272.13 How will BLM review my utilization plan and notify me of its decision?

(a) When BLM receives your utilization plan, we will make sure it is complete and review it for compliance with § 3200.4.

(b) If another Federal agency manages the surface of your lease, we will consult with that agency as part of the plan review.

(c) If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information.

(d) We will notify you in writing of our decision on your plan.

§ 3272.14 How do I get a permit to build or test my facility?

(a) Before building or testing a utilization facility, you must submit to BLM a:

(1) Utilization plan;

(2) Completed and signed facility construction permit; and

(3) Completed and signed site license. (See subpart 3273 of this part.)

(b) Do not start building or testing your utilization facility until we have approved both your facility construction permit and your site license.

(c) After our review, we will notify you whether we have approved or denied your permit, as well as of any conditions we require for conducting operations.

Subpart 3273—How To Apply for a Site License

§ 3273.10 When do I need a site license for a utilization facility?

You must obtain a site license approved by BLM, unless your facility will be located on lands leased as provided in § 3273.11. Do not start building or testing your utilization facility on public lands leased for geothermal resources until BLM has approved both your facility construction permit (see § 3272.14) and your site license. The facility operator must apply for the license.

§ 3273.11 When is a site license unnecessary?

You do not need a site license if your facility will be located:

(a) On private land or on split estate land where the United States does not own the surface; or

(b) On Federal land not leased for geothermal resources. In this situation, the Federal surface management agency will issue you the permit you need.

§ 3273.12 How will BLM review my site license application?

(a) When BLM receives your site license application, we will make sure it is complete. If we need more information for our review, we will ask you for that information and stop our review until we receive the information.

(b) If your site license is located on leased lands managed by the Department of Agriculture, we will consult with that agency and obtain concurrence before we approve your application. The agency may require additional license terms and conditions.

(c) If the land is subject to section 24 of the Federal Power Act, we will issue the site license with the terms and conditions requested by the Federal Energy Regulatory Commission.

(d) If another Federal agency manages the surface, we will consult with them to determine if they recommend additional license terms and conditions.

(e) After our review, we will notify you whether we approved or denied your license, as well as any additional conditions we require.

§ 3273.13 What lands are not available for geothermal site licenses?

BLM will not issue site licenses for lands that are not leased or not available for geothermal leasing (see § 3201.11).

§ 3273.14 What area does a site license cover?

A site license covers a reasonably compact tract of Federal land, limited to as much of the surface as is necessary to utilize geothermal resources. That means the site license area will only include the utilization facility itself and other necessary structures, such as substations and processing, repair, or storage facility areas.

§ 3273.15 What must I include in my site license application?

Your site license application must include:

(a) A description of the boundaries of the land applied for, as determined by a certified licensed surveyor. Describe the land by legal subdivision, section, township and range, or by approved protraction surveys, if applicable;

(b) The affected acreage;

(c) A non-refundable filing fee of $50;

(d) A site license bond (see § 3273.19);

(e) The first year's rent, if applicable (see § 3273.18); and

(f) Documentation that the lessee or unit operator accepts the siting of the facility, if the facility operator is neither the lessee nor the unit operator.

§ 3273.16 What is the annual rent for a site license?

BLM will specify the annual rent in your license and the date you must pay it, if you are required to pay rent (see § 3273.18). Your rent will be at least $100 per acre or fraction thereof for an electrical generation facility, and at least $10 per acre or fraction thereof for a direct use facility. Send the first year's rent to BLM, and all subsequent rental payments to MMS under 30 CFR part 218.

§ 3273.17 When may BLM reassess the annual rent for my site license?

BLM may reassess the rent for lands covered by the license, beginning with the tenth year and every ten years after that.

§ 3273.18 What facility operators must pay the annual site license rent?

If you are a lessee siting a utilization facility on your own lease, or a unit operator siting a utilization facility on leases committed to the unit, you are not required to pay rent. Only a facility operator who is not also a lessee or unit operator must pay rent.

§ 3273.19 What are the bonding requirements for a site license?

(a) For an electrical generation facility, the facility operator must submit a surety or personal bond to BLM for at least $100,000 that meets the requirements of subpart 3214 of this

part. BLM may increase the required bond amount. See subparts 3214 and 3215 of this part for additional details on bonding procedures.

(b) For a direct use facility, the facility operator must submit a surety or personal bond to BLM that meets the requirements of subpart 3214 of this part in an amount BLM will specify.

(c) The bond's terms must cover compliance with the requirements of § 3200.4.

(d) Until BLM approves your bond, do not start construction, testing, or any other activity that would disturb the surface.

§ 3273.20 When will BLM release my bond?

We will release your bond after you request it and we determine that you have:

(a) Removed the utilization facility and all associated equipment;

(b) Reclaimed the land; and

(c) Met all the requirements of § 3200.4.

§ 3273.21 What are my obligations under the site license?

As the facility operator, you:

(a) Must comply with the requirements of § 3200.4;

(b) Are liable for all damages to the lands, property, or resources of the United States caused by yourself, your employees, or your contractors or their employees;

(c) Must indemnify the United States against any liability for damages or injury to persons or property arising from the occupancy or use of the lands authorized under the site license; and

(d) Must restore any disturbed surface, and remove all structures when they are no longer needed for facility construction or operation. This includes the utilization facility if you cannot operate the facility and you are not diligent in your efforts to return the facility to operation.

§ 3273.22 How long will my site license remain in effect?

(a) The primary term of a site license is 30 years, with a preferential right to renew the license under terms and conditions set by BLM.

(b) If your lease on which the licensed site is located ends, you may apply for a facility permit under Section 501 of FLPMA, 43 U.S.C. 1761, if your facility is on BLM-managed lands. Otherwise, you must get permission from the surface management agency to continue using the surface for your facility.

§ 3273.23 May I renew my site license?

(a) You have a preferential right to renew your site license under terms and conditions BLM determines.

(b) If your site license is located on leased lands managed by the Department of Agriculture, we will consult with the surface management agency and obtain concurrence before renewing your license. The agency may require additional license terms and conditions. If another Federal agency manages the surface, we will consult with them before granting your renewal.

§ 3273.24 When may BLM terminate my site license?

(a) BLM may terminate a site license by written order. We may terminate your site license if you:

(1) Do not comply with the requirements of § 3270.11; or

(2) Do not comply with the requirements of § 3200.4.

(b) To prevent termination, you must correct the violation within 30 days after you receive a correction order from BLM, unless we determine that:

(1) The violation cannot be corrected within 30 days; and

(2) You are diligently attempting to correct it.

§ 3273.25 When may I relinquish my site license?

You may relinquish your site license by sending BLM a written notice requesting relinquishment for review and approval. We will not approve the relinquishment until you comply with § 3273.21.

§ 3273.26 When may I assign or transfer my site license?

You may assign or transfer your site license in whole or in part. Send BLM your completed and signed transfer application and a $50 filing fee. Your application must include a written statement that the transferee will comply with all license terms and conditions, and that the lessee accepts the transfer. The transferee must submit a bond meeting the requirements of § 3273.19. The transfer is not effective until we approve the bond and site license transfer.

Subpart 3274—Applying for and Obtaining a Commercial Use Permit

§ 3274.10 Do I need a commercial use permit to start commercial operations?

You must have a commercial use permit approved by BLM before you begin commercial operations from a Federal lease, a Federal unit, or a utilization facility.

§ 3274.11 What must I give BLM to approve my commercial use permit application?

Submit a completed and signed commercial permit form, to BLM, containing the following information:

(a) The design specifications, and the inspection and calibration schedule of production, injection, and royalty meters;

(b) A schematic diagram of the utilization site or individual well, showing the location of each production and royalty meter. If the sales point is located off the utilization site, give us a generalized schematic diagram of the electrical transmission or pipeline system, including meter locations;

(c) A copy of the sales contract for the sale and/or utilization of geothermal resources;

(d) A description and analysis of reservoir, production, and injection characteristics, including the flow rates, temperatures, and pressures of each production and injection well;

(e) A schematic diagram of each production and injection well showing the wellhead configuration, including meters;

(f) A schematic flow diagram of the utilization facility, including interconnections with other facilities, if applicable;

(g) A description of the utilization process in sufficient detail to enable BLM to determine whether the resource will be utilized in a manner consistent with law and regulations;

(h) The planned safety provisions for emergency shutdown to protect public health, safety, property, and the environment. This should include a schedule for the testing and maintenance of safety devices;

(i) The environmental and operational parameters that will be monitored during the operation of the facility and/or well(s); and

(j) Any additional information or data that we may require.

§ 3274.12 How will BLM review my commercial use permit application?

(a) When BLM receives your completed and signed commercial use permit application, we will make sure it is complete and review it for compliance with § 3200.4.

(b) If another Federal agency manages the surface of your lease, we will consult with that agency before we approve your commercial use permit.

(c) We will review your commercial use permit to make sure it conforms with your utilization plan and any mitigation measures we developed while reviewing your plan.

(d) We will check your commercial use permit for technical adequacy, and will ensure that your meters meet the accuracy standards (see §§ 3275.14 and 3275.15.)

(e) If we need any further information to complete our review, we will contact

you in writing and suspend our review until we receive the information.

(f) After our review, we will notify you whether your permit has been approved or denied, as well as any conditions of approval.

§ 3274.13 May I get a permit even if I cannot currently demonstrate I can operate within required standards?

Yes, but we may limit your operations to a prescribed set of activities and a set period of time, during which we will give you a chance to show you can operate within environmental and operational standards, based on actual facility and well data you collect. Send us a Sundry Notice to get BLM approval for extending your permit. If during this set time period you still cannot demonstrate your ability to operate within the required standards, we will terminate your authorization. You must then stop all operations and restore the surface to the standards we set in the termination notice.

Subpart 3275—Conducting Utilization Operations

§ 3275.10 How do I change my operations if I have an approved facility construction or commercial use permit?

Send BLM a completed and signed Sundry Notice describing your proposed change. Until we approve your Sundry Notice, you must continue to comply with the original permit terms.

§ 3275.11 What are a facility operator's obligations?

You must:

(a) Keep the facility in proper operating condition at all times by;

(1) Conducting training during your operation to ensure that your personnel are capable of performing emergency procedures quickly and effectively;

(2) Using properly maintained equipment; and

(3) Using operational practices that allow for quick and effective emergency response.

(b) Base the design of the utilization facility siting and operation on sound engineering principles and other pertinent geologic and engineering data;

(c) Prevent waste of, or damage to, geothermal and other energy and minerals resources; and

(d) Comply with the requirements of § 3200.4.

§ 3275.12 What environmental and safety requirements apply to facility operations?

(a) You must perform all utilization facility operations in a manner that:

(1) Protects the quality of surface and subsurface waters, air, and other natural resources, including wildlife, soil, vegetation, and natural history;

(2) Prevents unnecessary or undue degradation of the lands;

(3) Protects the quality of cultural, scenic, and recreational resources;

(4) Accommodates other land uses as much as possible;

(5) Minimizes noise;

(6) Prevents injury; and

(7) Prevents damage to property.

(b) You must monitor facility operations to identify and address local environmental resources and concerns associated with your facility or lease operations.

(c) You must remove or, with BLM approval, properly store all equipment and materials not in use.

(d) You must properly abandon the facility and reclaim any disturbed surface to standards approved or prescribed by us, when the land is no longer needed for facility construction or operation.

(e) When we require, you must submit a contingency plan describing procedures to protect public health and safety, property, and the environment.

(f) You must comply with the requirements of § 3200.4.

§ 3275.13 How must the facility operator measure the geothermal resources?

The facility operator must:

(a) Measure all production, injection and utilization in accordance with methods and standards approved by BLM (see § 3275.15);

(b) Maintain and test all metering equipment. If your equipment is defective or out of tolerance, you must promptly recalibrate, repair, or replace it; and

(c) Determine the amount of production and/or utilization in accordance with methods and procedures approved by BLM (see § 3275.17).

§ 3275.14 What aspects of my geothermal operations must I measure?

(a) For all well operations, you must measure wellhead flow, wellhead temperature, and wellhead pressure.

(b) For all electrical generation facilities, you must measure:

(1) Steam and/or hot water flow entering the facility;

(2) Temperature of the water and/or steam entering the facility;

(3) Pressure of the water and/or steam entering the facility;

(4) Gross electricity generated;

(5) Net electricity at the facility tailgate;

(6) Electricity delivered to the sales point; and

(7) Temperature of the steam and/or hot water exiting the facility.

(c) For direct use facilities, you must measure:

(1) Flow of steam and/or hot water; and

(2) Temperature of the steam or water entering the facility.

(d) We may also require additional measurements, depending on the type of facility, the type and quality of the resource, and the terms of the sales contract.

§ 3275.15 How accurately must I measure my production and utilization?

It depends on whether you use a meter to calculate Federal production or royalty, and what quantity of resource you are measuring.

(a) For meters that you use to calculate Federal royalty:

(1) If the meter measures electricity, it must have an accuracy of ±0.25% or better of reading;

(2) If the meter measures steam flowing at more than 100,000 lbs/hr on a monthly basis, it must have an accuracy of ±2 percent or better of reading;

(3) If the meter measures steam flowing at less than 100,000 lbs/hr on a monthly basis, it must have an accuracy of ±4 percent or better of reading;

(4) If the meter measures water flowing at more than 500,000 lbs/hr on a monthly basis, it must have an accuracy of ±2 percent or better of reading;

(5) If the meter measures water flowing at 500,000 lbs/hr or less on a monthly basis, it must have an accuracy of ±4 percent or better of reading;

(6) If the meter measures heat content, it must have an accuracy of ±4%, or better; or

(7) If the meter measures two phase flow at any rate, BLM will determine and inform you of the meter accuracy requirements. You must obtain our prior written approval before installing and using meters for two phase flow.

(b) Any meters that you do not use to calculate Federal royalty are considered production meters, which must maintain an accuracy of ±5 percent or better.

(c) We may modify these requirements as necessary to protect the interests of the United States.

§ 3275.16 What standards apply to installing and maintaining meters?

(a) You must install and maintain all meters that we require, either according to the manufacturer's recommendations and specifications or paragraphs (b) through (e) of this section, whichever are more restrictive.

(b) If you use an orifice plate to calculate Federal royalty, the orifice plate installation must comply with ''API Manual of Petroleum

Measurement Standards, Chapter 14, Section 3, Part 2, Fourth Edition, April 2000.''

(c) For meters used to calculate Federal royalty, you must calibrate the meter against a known standard as follows:

(1) You must annually calibrate meters measuring electricity;

(2) You must calibrate meters measuring steam or hot water flow with a turbine, vortex, ultrasonics, or other linear devices, every six months, or as recommended by the manufacturer, whichever is more frequent; and

(3) You must calibrate meters measuring steam or hot water flow with an orifice plate, venturi, pitot tube, or other differential device, every month, and you must inspect and repair the primary device (orifice plate, venturi, pitot tube) annually.

(d) You must use calibration equipment that is more accurate than the equipment you are calibrating.

(e) BLM may modify any of these requirements as necessary to protect the resources of the United States.

§ 3275.17 What must I do if I find an error in a meter?

(a) If you find an error in a meter used to calculate Federal royalty, you must correct the error immediately and notify BLM by the next working day of its discovery.

(b) If the meter is not used to calculate Federal royalty, you must correct the error and notify us within 3 days of its discovery.

(c) If correcting the error will cause a change in the sales quantity of more than 2 percent for the month(s) in which the error occurred, you must adjust the sales quantity for that month(s) and submit an amended facility report to us within three working days.

§ 3275.18 May BLM require me to test for byproducts associated with geothermal resource production?

You must conduct any tests we require, including tests for byproducts, if we find it necessary to require such tests for a given operation.

§ 3275.19 How do I apply to commingle production?

To request approval to commingle production, send us a completed and signed Sundry Notice. We will review your request to commingle production from wells on your lease with production from your other leases or from leases where you do not have an interest. Do not commingle production until we have approved your Sundry Notice.

§ 3275.20 What will BLM do if I waste geothermal resources?

We will determine the amount of any resources you have lost through waste. If you did not take all reasonable precautions to prevent waste, we will require you to pay compensation based on the value of the lost production. If BLM finds that you have not adequately corrected the situation, we will follow the noncompliance procedures in § 3277.12.

§ 3275.21 May BLM order me to drill and produce wells on my lease?

BLM may order you to drill and produce wells on your lease when we find it necessary to protect Federal interests, prevent drainage, or ensure that lease development and production occur in accordance with sound operating practices.

Subpart 3276—Reports: Utilization Operations

§ 3276.10 What are the reporting requirements for facility and lease operations involving Federal geothermal resources?

(a) When you begin commercial production and operation, you must notify BLM in writing within 5 business days.

(b) Submit completed and signed monthly reports thereafter to BLM as follows:

(1) If you are a lessee or unit operator supplying Federal geothermal resources to a utilization facility on Federal land leased for geothermal resources, submit a monthly report of well operations for all wells on your lease or unit;

(2) If you are the operator of a utilization facility on Federal land leased for geothermal resources, submit a monthly report of facility operations;

(3) If you are both a lessee or unit operator and the operator of a utilization facility on Federal land leased for geothermal resources, you may combine the requirements of paragraphs (b)(1) and (b)(2) of this section into one report; or

(4) If you are a lessee or unit operator supplying Federal geothermal resources to a utilization facility not located on Federal land leased for geothermal resources, and the sales point for the resource utilized is at the facility tailgate, submit all the requirements of paragraphs (b)(1) and (b)(2) of this section. You may combine these into one report.

(c) Unless BLM grants a variance, your reports must be received by BLM by the end of the month following the month that the report covers. For example, the report covering the month of July is due by August 31.

§ 3276.11 What information must I include for each well in the monthly report of well operations?

(a) Any drilling operations or changes made to a well;

(b) Total production or injection in thousands of pounds (klbs);

(c) Production or injection temperature in degrees Fahrenheit (deg.F);

(d) Production or injection pressure in pounds per square inch (psi). You must also specify whether this is gauge pressure (psig) or absolute pressure (psia);

(e) The number of days the well was producing or injecting;

(f) The well status at the end of the month;

(g) The amount of steam or hot water lost to venting or leakage, if the amount is greater than 0.5 percent of total lease production. We may modify this standard by a written order describing the change;

(h) The lease number or unit name where the well is located;

(i) The month and year to which the report applies;

(j) Your name, title, signature, and a phone number where BLM may contact you; and

(k) Any other information that we may require.

§ 3276.12 What information must I give BLM in the monthly report for facility operations?

(a) For all electrical generation facilities, include in your monthly report of facility operations:

(1) Mass of steam and/or hot water, in klbs, used or brought into the facility. For facilities using both steam and hot water, you must report the mass of each;

(2) The temperature of the steam or hot water in deg. F;

(3) The pressure of the steam or hot water in psi. You must also specify whether this is psig or psia;

(4) Gross generation in kilowatt hours (kwh);

(5) Net generation at the tailgate of the facility in kwh;

(6) Temperature in deg. F and volume of the steam or hot water exiting the facility;

(7) The number of hours the plant was on line;

(8) A brief description of any outages; and

(9) Any other information we may require.

(b) For electrical generation facilities where Federal royalty is based on the sale of electricity to a utility, in addition to the information required under paragraph (a) of this section, you must include the following information in

your monthly report of facility operations:

(1) Amount of electricity delivered to the sales point in kwh, if the sales point is different from the tailgate of the facility;

(2) Amount of electricity lost to transmission;

(3) A report from the utility purchasing the electricity which documents the total number of kwhs delivered to the sales point during the month, or monthly reporting period if it is not a calendar month, and the number of kwhs delivered during diurnal and seasonal pricing periods; and

(4) Any other information we may require.

§ 3276.13 What additional information must I give BLM in the monthly report for flash and dry steam facilities?

In addition to the regular monthly report information required by § 3276.12, send to BLM:

(a) Steam flow into the turbine in klbs; for dual flash facilities, you must separate the steam flow into high pressure steam and low pressure steam;

(b) Condenser pressure in psia;

(c) Condenser temperature in deg. F;

(d) Auxiliary steam flow used for gas ejectors, steam seals, pumps, etc., in klbs;

(e) Flow of condensate out of the plant (after the cooling towers) in klbs; and

(f) Any other information we may require.

§ 3276.14 What information must I give BLM in the monthly report for direct use facilities?

(a) Total monthly flow through the facility in thousands of gallons (kgal) or klbs;

(b) Monthly average temperature in, in deg. F;

(c) Number of hours that geothermal heat was used; and

(d) Any other information we may require.

§ 3276.15 How must I notify BLM of accidents occurring at my utilization facility?

You must orally inform us of all accidents that affect operations or create environmental hazards within 24 hours after each accident. When you contact us, we may require you to submit a written report fully describing the incident.

Subpart 3277—Inspections, Enforcement, and Noncompliance

§ 3277.10 When will BLM inspect my operations?

BLM may inspect all operations to ensure compliance with the requirements of § 3200.4. You must give us access during normal operating hours to inspect all facilities utilizing Federal geothermal resources.

§ 3277.11 What records must I keep available for inspection?

(a) The operator or facility operator must keep all records and information pertaining to the operation of your utilization facility, royalty and production meters, and safety training available for BLM inspection for a period of 6 years following the time the records and information are created.

(b) This requirement also pertains to records and information from meters located off your lease or unit when BLM needs them to determine:

(1) Resource production to a utilization facility, or

(2) The allocation of resource production to your lease or unit.

(c) Store all of these records in a place where they are conveniently available.

§ 3277.12 What will BLM do if I do not comply with all BLM requirements pertaining to utilization operations?

(a) We will issue you a written Incident of Noncompliance, directing you to take required corrective action within a specific time period. If the noncompliance continues or is serious in nature, BLM will take one or more of the following actions:

(1) Enter the lease, and correct any deficiencies at your expense;

(2) Collect all or part of your bond;

(3) Order modification or shutdown of your operations; and

(4) Take other enforcement action against a lessee who is ultimately responsible for the noncompliance.

(b) Noncompliance may result in BLM terminating your lease (see §§ 3213.23 through 3213.25).

Subpart 3278—Confidential, Proprietary Information

§ 3278.10 When will BLM disclose information I submit under these regulations?

All Federal and Indian data and information submitted to BLM are subject to part 2 of this title. Part 2 includes the regulations of the Department of the Interior covering public disclosure of data and information contained in Department records. Certain mineral information not protected from disclosure under part 2 may be made available for inspection without a Freedom of Information Act (FOIA) request. Examples of information we will not treat as confidential include:

(a) Facility location;

(b) Facility generation capacity; or

(c) To whom you are selling electricity or produced resources.

§ 3278.11 When I submit confidential, proprietary information, how can I help ensure it is not available to the public?

When you submit data and information that you believe to be exempt from disclosure under part 2 of this title, you must clearly mark each page that you believe contains confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

§ 3278.12 How long will information I give BLM remain confidential or proprietary?

The FOIA does not provide a finite period of time during which information may be exempt from public disclosure. BLM will review each situation individually and in accordance with part 2 of this title.

Subpart 3279—Utilization Relief and Appeals

§ 3279.10 When may I request a variance from BLM requirements pertaining to utilization operations?

(a) You may file a request with BLM for a variance for your approved utilization operations from the requirements of § 3200.4. Your request must include enough information to explain:

(1) Why you cannot comply with the requirements; and

(2) Why you need the variance to operate your facility, conserve natural resources, or protect public health and safety, property, or the environment.

(b) We may approve your request orally or in writing. If we give you oral approval, we will follow up with written confirmation.

§ 3279.11 How may I appeal a BLM decision regarding my utilization operations?

You may appeal our decision affecting your utilization operations in accordance with § 3200.5.

2. Revise part 3280 to read as follows:

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS

Subpart 3280—Geothermal Resources Unit Agreements—General

Sec.

Authority: 30 U.S.C. 1001–1028 and 43 U.S.C. 1701 *et seq.*

Subpart 3280—Geothermal Resources Unit Agreements—General

§ 3280.1 What is the purpose and scope of this part?

(a) The purpose of this part is to provide holders of Federal and non-Federal geothermal leases and owners of non-Federal mineral interests the opportunity to unite under a Federal geothermal unit agreement to explore for and develop geothermal resources in a manner meeting the public interest.

(b) These regulations identify:

(1) The procedures a prospective unit operator must follow to receive BLM approval for unit area designation and a Federal geothermal unit agreement;

(2) The operational requirements a unit operator must meet once the unit agreement is approved; and

(3) The procedures BLM will follow in reviewing, approving, and administering a Federal geothermal unit agreement.

§ 3280.2 Definitions.

The following terms, as used in this part or in any agreement approved under the regulations in this part, have the following meanings unless otherwise defined in such agreement:

Minimum initial unit obligation means the requirement to complete at least one unit well within the time frame specified in the unit agreement. If this requirement is not met, BLM deems the unit void as though it was never in effect.

Participating area means that part of the Unit Area that BLM deems to be productive from a horizon or deposit, and to which production would be

allocated in the manner described in the unit agreement assuming that all lands are committed to the unit agreement.

Plan of development means the document a unit operator submits to BLM defining how the unit operator will diligently pursue unit exploration and development to meet both initial and subsequent unit development and public interest obligations.

Public interest means operations within a geothermal unit resulting in:

(1) Diligent development;

(2) Efficient exploration, production and utilization of the resource;

(3) Conservation of natural resources; and

(4) Prevention of waste.

Reasonably proven to produce means a sufficient demonstration, based on scientific and technical information, that lands are contributing to unit production in commercial quantities or are providing reservoir pressure support for unit production.

Unit agreement means an agreement for the exploration, development, production, and utilization of separately owned interests in the geothermal resources made subject thereto as a single consolidated unit without regard to separate ownerships and which provides for the allocation of costs and benefits on a basis defined in the agreement or plan.

Unit area means the area described in a unit agreement as constituting the land logically subject to development under such agreement.

Unit contraction provision means a term of a unit agreement providing that the boundaries of the unit area will contract to the size of the participating area, by having those lands outside of the participating area removed. BLM will contract the unit area if additional unit wells are not drilled and completed within the timeframe specified in the unit agreement.

Unit operator means the person, association, partnership, corporation, or other business entity designated under a unit agreement to conduct operations on unitized land as specified in such agreement.

Unit well means a well that is:

(1) Designed to produce or utilize geothermal resources in commercial quantities;

(2) Drilled and completed to the bona fide geologic objective specified in the unit agreement, unless a commercial resource is found at a shallower depth; and

(3) Located on a lease committed to the unit agreement.

Unitized land means the part of a unit area committed to a unit agreement.

Unitized substances means deposits of geothermal resources recovered from unitized land by operation under and pursuant to a unit agreement.

Working interest means the interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in a unit agreement, the owner of such interest is vested with the right to explore for, develop, produce, and utilize such resources. The right delegated to the unit operator as such by the unit agreement is not to be regarded as a working interest.

§ 3280.3 What is BLM's general policy regarding the formation of unit agreements?

For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal reservoir, field, or like area, is subject to any unit agreement), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if BLM determines and certifies this to be necessary or advisable in the public interest.

§ 3280.4 When may BLM require Federal lessees to unitize their leases or require a Federal lessee to commit a lease to a unit?

(a) BLM may initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if in the public interest.

(b) BLM may require that leases that become effective on or after August 8, 2005, contain a provision stating that BLM may require commitment of the lease to a unit agreement, and may prescribe the unit agreement to which such lease must commit to protect the rights of all parties in interest, including the United States.

§ 3280.5 May BLM require the modification of lease requirements in connection with the creation and operation of a unit agreement?

(a) BLM may, in its discretion and with the consent of the lessees involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases, and make conditions with respect to the leases, with the consent of the lessees, in connection with the creation and operation of any such unit agreement as BLM may consider necessary or advisable to secure the protection of the public interest.

(b) If leases to be included in a unit have unlike lease terms, such leases need not be modified to be in the same unit.

§ 3280.6 When may BLM require a unit operator to modify the rate of exploration, development, or production?

BLM may require a unit agreement applying to lands owned by the United States to contain a provision under which BLM or an entity designated in the unit agreement may alter or modify, from time to time, the rate of resource exploration or development, or production quantity or rate, under the unit agreement.

§ 3280.7 Can BLM require an owner or lessee of lands not under Federal administration to unitize their lands or leases?

BLM cannot require the commitment of lands or leases not under Federal administration or jurisdiction to a Federal unit.

Subpart 3281—Application, Review, and Approval of a Unit Agreement

§ 3281.1 What steps must I follow for BLM to approve my unit agreement?

Before a unit agreement becomes effective, BLM must designate the unit area and approve the unit agreement. Procedures for designating the unit area are set forth in §§ 3281.2 through 3281.6. Procedures for approving the unit agreement are set forth in §§ 3281.7 through 3281.17.

§ 3281.2 What documents must the unit operator submit to BLM before we may designate a unit area?

(a) The unit operator must submit the following documents before BLM may designate a proposed unit area:

(1) A report detailing the geologic information and interpretation that indicates, to the satisfaction of BLM, the proposed area is geologically appropriate for unitization;

(2) A map showing:

(i) The proposed unit area;

(ii) All leases (including Federal, state, or private) and tracts (unleased privately owned land or mineral rights);

(iii) The Federal lease number and lessee; and

(iv) An individual unit tract number;

(3) A list which includes the following information as to each Federal, state, and private leases, and tracts of unleased land, to be included in the unit:

(i) The lease number;

(ii) The legal land description of each lease and tract;

(iii) The acreage of each lease or tract;

(iv) The lessor and lessee of each lease;

(v) The mineral rights owner of any unleased tract; and

(vi) The total number of acres:

(A) In the unit area;

(B) Under Federal administration; and

(C) In private or other (such as state) ownership; and

(4) Any other information BLM may require.

(b) Before submitting any documents, ask BLM how many copies are required.

§ 3281.3 What geologic information may a unit operator use in proposing a unit area?

(a) A unit operator may use any reasonable geologic information necessary to justify its proposed unit area. The information must document that the proposed unit area is:

(1) Geologically contiguous; and

(2) Suitable for resource exploration, development and production under a unit agreement.

(b) BLM will decide which information and interpretations are acceptable. BLM's acceptance of the information and interpretations may vary depending on the types and level of geologic information available for the area.

§ 3281.4 What are the size and shape requirements for a unit area?

There are no specific size or shape requirements for a unit area, except that it must meet the requirements of § 3281.3. The size of the unit area may affect the minimum initial unit obligation requirements (see § 3281.15(b)).

§ 3281.5 What happens if BLM receives applications that include overlapping unit areas?

(a) If BLM receives unit area applications that include overlapping lands, we will request that each prospective unit operator resolve the issue with the other operator(s). If the prospective operators cannot reach a resolution, BLM may:

(1) Return all unit applications and request all applicants to revise their proposed unit areas;

(2) Designate any unit area proposal that is geologically appropriate for unitization and best meets public interest requirements; or

(3) Designate a different area for unitization when doing so is in the public interest.

(b) BLM will reject any application that includes lands already in an approved unit area.

§ 3281.6 What action will BLM take after reviewing a proposed unit area designation?

(a) BLM will approve the unit area designation in writing and notify the prospective unit operator once we determine that:

(1) We have received the information required at § 3281.2;

(2) Information available to BLM documents that the area is geologically appropriate for unitization; and

(3) Unitization is appropriate to conserve the natural resources of a geothermal reservoir, field, or like area, or part thereof.

(b) BLM will notify a prospective unit operator in writing if we do not designate a proposed unit area.

§ 3281.7 What documents must a unit operator submit to BLM before we will approve a unit agreement?

After BLM approves a unit area designation, a unit operator must submit the following information in order for BLM to approve a unit agreement:

(a) Documentation of tract commitment (see §§ 3281.8 and 3281.9);

(b) The unit agreement (see § 3281.15);

(c) The map required by § 3281.2(a)(2), if any modifications have occurred since the unit area was designated;

(d) The list required by § 3281.2(a)(3) indicating whether each lease or tract is committed to the unit agreement; and

(e) The plan of development.

§ 3281.8 Must a unit operator provide working interests within the designated unit area the opportunity to join the unit?

After BLM designates a unit area, the unit operator must invite all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) in the designated unit area to join the unit. The unit operator must provide the lease interests and mineral rights owners 30 days to respond. If an interest or owner does not respond, the unit operator must provide BLM with written evidence that all the interests or owners were invited to join the unit. BLM will not approve a unit agreement proposal if this evidence is not submitted.

§ 3281.9 How does a unit operator provide documentation to BLM of lease and tract commitment status?

(a) The unit operator must provide documentation to BLM of the commitment status of each lease and tract in the designated unit area. The documentation must include a joinder or other comparable document signed by the lessee or mineral rights owner, or evidence that an opportunity to join was offered and no response was received. (see § 3281.8).

(b) A majority interest of owners of any single lease has authority to commit the lease to a unit agreement.

§ 3281.10 How will BLM determine that I have sufficient control of the proposed unit area?

(a) BLM will determine whether:

(1) A unit operator has sufficient control of the proposed unit area by reviewing the number and location of leases and tracts committed and their geologic potential for development in relation to the entire proposed unit area; and

(2) The committed tracts provide the unit operator with sufficient control of the unit area to conduct resource exploration and development in the public interest.

(b) If BLM determines that the unit operator does not have sufficient control of the unit area, we will not approve the unit agreement.

§ 3281.11 What are the unit operator qualifications?

(a) Before BLM will approve a unit agreement, the unit operator must:

(1) Meet the same qualifications as a lessee (see § 3202.10 of this chapter); and

(2) Demonstrate sufficient control of the unit area (see § 3281.10).

(b) A unit operator is not required to have an interest in the unit area.

§ 3281.12 Who designates the unit operator?

The owners of mineral rights and lease interests committed to the unit agreement will nominate a unit operator. Before designating the unit operator, BLM must also determine whether the prospective unit operator meets the requirements of § 3281.11.

§ 3281.13 Is there a format or model a unit operator must use when proposing a unit agreement?

When proposing a unit agreement, submit to BLM:

(a) The model unit agreement (see § 3286.1);

(b) The model unit agreement with variances noted; or

(c) Any unit agreement format that contains all the terms and conditions BLM requires (see §§ 3281.14 and 3281.15).

§ 3281.14 What minimum requirements and terms must be incorporated into the unit agreement?

(a) The unit agreement must, at a minimum:

(1) State who the unit operator is, and that the unit operator and participating lessees accept the unit terms and obligations set forth in the agreement and applicable BLM regulations;

(2) State the size and general location of the unit area;

(3) Include procedures for revising the unit area or participating area(s);

(4) Include procedures for amending the unit agreement;

(5) State the effective date and term of the unit, which is typically 5 years;

(6) Incorporate the minimum initial unit obligations, as specified in § 3281.16;

(7) State that BLM may require a modification of the rate of resource exploration or development, or the production quantity or rate, within the unit area;

(8) State that the agreement is subject to periodic BLM review;

(9) State that BLM will deem the unit agreement as void as if it were never in effect if the minimum initial unit obligations are not met;

(10) Include a plan of development; and

(11) Include a unit contraction provision.

(b) The agreement may include any other provisions or terms that BLM and the unit operator agree are necessary for proper resource exploration and development, and management of the unit area.

§ 3281.15 What is the minimum initial unit obligation a unit agreement must contain?

(a) The unit agreement must:

(1) Require the unit operator to drill, within the time frame specified in the unit agreement, at least one unit well;

(2) Specify the location and the minimum depth and/or geologic structure to which the initial unit well will be drilled; and

(3) Require the unit operator, upon completing a unit well, to provide to BLM in a timely manner the information required at § 3264.10 of this chapter.

(b) Depending on the size of the proposed unit area, BLM may require the minimum initial unit agreement obligation to include the drilling of more than one unit well.

(c) If necessary to aid in the evaluation of drilling locations, BLM and the unit operator may agree to include types of exploration operations as part of the initial unit obligation. An example of such work is drilling temperature gradient wells.

(d) BLM will not consider any work done prior to unit approval for the purpose of meeting initial unit obligations.

§ 3281.16 When must a Plan of Development be submitted to BLM?

(a) The prospective unit operator must submit an initial Plan of Development at the time the unit area is proposed for designation.

(b) Subsequent Plans of Development that were not already provided must be submitted to address future unit activities to be conducted throughout the term of the unit agreement. For example, if the Plan only addressed activities until a unit well is completed, the subsequent Plan must address activities including the drilling of additional unit wells until a producible well is completed. Once a producible well is completed, the Plan or subsequent Plan must address those activities related to utilizing the resource.

(c) There is no requirement to submit a Plan of Development once unitized resources begin commercial operation.

§ 3281.17 What information must be provided in the Plan of Development?

(a) The Plan of Development must state the types of and time frames for activities the unit operator will conduct in diligent pursuit of unit exploration and development. The Plan may address those activities that will be conducted until the minimum initial unit obligation is met, or it may address all activities that will occur through the term of the unit agreement.

(b) The Plan of Development may specify that the activities will be conducted in phases during the term of the unit agreement. For example, the number, location, and depth of temperature gradient wells, and the time frame for the completion of these wells, may be the first phase. A second phase may include drilling of observation or slim wells to a greater depth than that specified in the first phase. Completion of the unit well may be the third phase. In all cases, the Plan of Development must include the completion of at lease one unit well.

§ 3281.18 What action will BLM take in reviewing the Plan of Development?

BLM will review the Plan of Development to ensure that the types of activities and the time frames for their completions meet public interest requirements. If BLM determines that the Plan of Development does not meet these requirements, BLM will negotiate with the prospective unit operator to revise the proposed activities. BLM will not designate a unit area until the Plan of Development meets applicable requirements.

§ 3281.19 What action will BLM take on a proposed unit agreement?

BLM will:

(a) Review the proposed unit agreement to ensure that the public interest is protected and that the agreement conforms to applicable laws and regulations;

(b) Coordinate the review of a proposed unit agreement with appropriate state agencies, and other Federal surface management agencies, if applicable;

(c) Approve the unit agreement and provide the unit operator with signed copies of the agreement, if we determine:

(1) That the unit operator has submitted all required information;

(2) That the unit agreement and the unit operator satisfy all required terms and conditions, including the requirements specified at §§ 3281.14 and 3281.15, and conform with all applicable laws and regulations; and

(3) That the unit agreement is necessary or advisable to meet the public interest;

(d) Notify the unit operator in writing if we reject the unit agreement proposal; and

(e) Reject any unit application that includes lands already committed to an approved unit agreement.

§ 3281.20 When is a unit agreement effective?

The effective date of the unit agreement approval is the first day of the month following the date BLM approves and signs it. The unit operator may request that the effective date be the first day of the month in which the agreement is signed by BLM, or a more appropriate date agreed to by BLM.

Subpart 3282—Participating Area

§ 3282.1 What is a participating area?

(a) A participating area is the combined portion of the unitized area which BLM determines:

(1) Is reasonably proven to produce geothermal resources; or

(2) Supports production in commercial quantities, such as pressure support from injection wells.

(b) The size and configuration of all participating areas and revisions are not effective until BLM approves them.

§ 3282.2 When must the unit operator have a participating area approved?

You must have an established BLM-approved participating area to allocate production and royalties before beginning commercial operations under a unit agreement to allocate production within the unit.

§ 3282.3 When must the unit operator submit an application for BLM approval of a proposed initial participating area?

The unit operator must submit an application for BLM approval of a proposed participating area no later than:

(a) 60 days after receiving BLM's determination identified in § 3281.15(a)(3) that a unit well will produce or utilize in commercial quantities; or

(b) 30 days before the initiation of commercial operations, whichever occurs earlier.

§ 3282.4 What general information must the unit operator submit with a proposed participating area application?

The unit operator must submit the following information with a participating area application:

(a) Technical information supporting its application (see § 3282.5);

(b) The information required in § 3281.2(a)(2) and (3) for the lands in the proposed participating area; and

(c) Any other information BLM may require.

§ 3282.5 What technical information must the unit operator submit with a proposed participating area application?

At a minimum, the unit operator must submit the following technical information with a proposed participating area application:

(a) Documentation that the participating area includes:

(1) The production and injection wells necessary for unit operations;

(2) Unit wells that are capable of being produced or utilized in commercial quantities; and

(3) The area each well drains or supplies pressure communication.

(b) Data, including logs, from production and injection well testing, if not previously submitted under § 3264.10 of this chapter;

(c) Interpretations of well performance, and reservoir geology and structure, that document that the lands are reasonably proven to produce; and

(d) Any other information BLM may require.

§ 3282.6 When must the unit operator propose to revise a participating area boundary?

(a) The unit operator must submit a written application to BLM to revise a participating area boundary no later than 60 days after receipt of the BLM determination described herein, when either:

(1) A well is completed that BLM has determined will produce or utilize in commercial quantities, and such well:

(i) Is located outside of an existing participating area; or

(ii) Drains an area outside the existing participating area; or

(2) An injection well located outside of an existing participating area is put into use that BLM has determined provides reservoir pressure support to production.

(b) The unit operator may submit a written application for a revision of a participating area when new or additional technical information or revised interpretations of any information provides a basis for revising the boundary.

(c) The unit operator may submit a written request to BLM to delay a participation area revision decision when drilling multiple wells in the unit is actively pursued or the drilling is providing additional technical information. A delay will not affect the effective date of any participation area revision (see § 3282.7). The request must include:

(1) The well locations;

(2) Anticipated spud and completion dates of each well;

(3) The timing of well testing and analyses of technical information; and

(4) The anticipated date BLM will receive the participation area revision for review.

(d) BLM will provide the unit operator with a written decision on the application to revise a participating area or the request to delay a participating area revision decision by BLM.

§ 3282.7 What is the effective date of an initial participating area or revision of an existing participating area?

(a) BLM will establish the appropriate effective date of an initial participating area or any revision to a participating area. The effective date may be, but is not limited to, the first day of the month in which:

(1) A well is completed that causes the participating area to be formed or revised;

(2) Commercial operations start; or

(3) New or additional technical information becomes known that provides a basis for revising the boundary (such as when production from, or injection to, an area outside the participating area first became known).

(b) The unit operator may request BLM approve a specific effective date for the participating area or revision, but the date may not be earlier than the effective date of the unit.

§ 3282.8 What are the reasons BLM would not approve a revision of the participating area boundary?

BLM will not approve a revision of the participating area boundary:

(a) If the unit operator does not submit the required information;

(b) If BLM determines that the new or additional technical information does not support a boundary revision; or

(c) If it reduces the size of a participating area because of depletion of the resource.

§ 3282.9 How is production allocated within a participating area?

Allocation of production to each committed lease or tract within a participating area is in the same proportion as that lease's or tract's surface acreage within the participating area.

§ 3282.10 When will unleased Federal lands in a participating area receive a production allocation?

(a) Unleased Federal lands within a participating area that are available for leasing are treated as follows:

(1) For royalty purposes only, you must allocate production to unleased Federal lands in the participating area as if the acreage were committed to the participating area.

(2) The unit operator must pay royalty to the United States based on a rate not less than the highest royalty rate for any Federal lease in the participating area.

(b) If BLM is not allowed to lease the unleased Federal lands in the participating area because of restrictions based on planning decisions or other statutory requirements, the lands will not receive an allocation of production (see § 3201.11 of this chapter).

§ 3282.11 May a participating area continue if there is intermittent unit production?

A participating area may continue if there is intermittent unit production only if BLM determines that intermittent production is in the public interest. For example, a direct use facility may only require production to occur during winter months.

§ 3282.12 When does a participating area terminate?

A participating area terminates when either:

(a) The unit operator permanently stops operations in or affecting the participating area; or

(b) Sixty days after BLM notifies the unit operator in writing that we have determined that operations in the participating area are not being conducted in accordance with the unit agreement, the participating area approval, or the public interest. If before the expiration of the 60 days, the unit operator demonstrates to BLM's satisfaction that the basis for BLM's determination is erroneous or has been rectified, BLM will not terminate the participating area.

Subpart 3283—Modifications to the Unit Agreement

§ 3283.1 When may the unit operator modify the unit agreement?

(a) The unit operator may propose to modify a unit agreement by submitting an application to BLM that:

(1) Identifies the proposed change and the reason for the change; and

(2) Certifies that all necessary unit interests have agreed to the change.

(b) BLM will send the unit operator written notification of BLM's decision regarding the application. Proposed modifications to a unit agreement will not become effective until BLM approves them. BLM's approval may be made effective retroactively to the date the application was complete. BLM may approve a different effective date, including a date the unit operator requests and for which the unit operator provides acceptable justification.

§ 3283.2 When may the unit operator revise the unit contraction provision of a unit agreement?

(a) The unit operator may submit to BLM a request to revise the unit contraction provision of a unit agreement, if the unit operator has either:

(1) Commenced commercial operations of unitized resources; or

(2) Completed a unit well that produces or utilizes geothermal resources in commercial quantities.

(b) The request may propose an extension of the unit contraction date and/or a partial contraction of the unit area, and must include the following information:

(1) The period for which the revision is requested; and

(2) Whether an extension of the unit contraction date and/or a partial contraction of the unit area is requested.

(c) The request should address the following factors when applicable:

(1) Economic constraints that limit the opportunity to drill and utilize the resource from additional wells;

(2) Reservoir monitoring or injection wells that BLM determines are necessary for unit operations are not located in the participating area;

(3) An inability to drill additional wells is due to circumstances beyond the unit operator's control, and a unit well that has produced or utilized in commercial quantities already is located in the unit;

(4) The types and intensity of unit operations already conducted in the unit area;

(5) The availability of viable electrical or resource sales contracts;

(6) The opportunity to utilize the resource economically; or

(7) Any other information that supports revision of the unit contraction provision.

(d) BLM will consider the factors discussed along with any other information submitted, and will approve the request if we determine that the revision is in the public interest. The approval may be subject to conditions such as requiring an annual renewal, or setting the timing and conditions for when phased contractions or termination of the revision may occur.

§ 3283.3 How will the unit operator know the status of a unit contraction revision request?

BLM will notify the unit operator in writing of our decision. If we approve the request, we:

(a) Will specify the term of the contraction extension and/or which lands will remain in the unit agreement;

(b) May require the unit operator to update the informational requirements of § 3282.3; and

(c) May terminate the participating area contraction revision when we find it necessary in the public interest.

§ 3283.4 When may I add lands to or remove lands from a unit agreement?

(a) The unit operator may request BLM to designate the addition or removal of lands to or from a unit agreement.

(b) In order for BLM to complete a review of the unit area revision request, the unit operator must submit to BLM the information required in §§ 3281.2 and 3281.7.

(c) BLM will:

(1) Review the request;

(2) Determine whether the information provided is sufficient and whether the new or additional geologic information or interpretation provides an acceptable basis for the unit boundary change; and

(3) Notify the unit operator in writing of our decision.

(d) If BLM approves the revision, the unit operator must notify all owners of lease interests or mineral rights of the unit area revision.

§ 3283.5 When will BLM periodically review unit agreements?

BLM will periodically review all unit agreements to determine compliance with § 3283.6 in accordance with the following schedule:

(a) Not later than 5 years after the approval of each unit agreement; and

(b) At least every 5 years following the initial unit review.

§ 3283.6 What is the purpose of BLM's periodic review?

(a) BLM must review all unit agreements to determine whether any of the leases, or portions of leases, committed to any unit are no longer reasonably necessary for unit operations, and eliminate from inclusion in the unit agreement any such lands it determines not reasonably necessary for unit operations.

(b) The elimination will be based on scientific evidence, and occur only for the purpose of conserving and properly managing the geothermal resources.

(c) BLM will not eliminate any lands from a unit until the unit operator, the lessee, and any other person with a legal interest in such lands, have been given reasonable notice and opportunity to comment.

(d) Any lands eliminated from a unit under this section are eligible for a lease extension under subpart 3207 of part 3200 of this chapter if the land meets the requirements for the extension.

§ 3283.7 When may unit operators be changed?

Unit operators may be changed only with BLM's written approval.

§ 3283.8 What must be filed with BLM to change the unit operator?

To change the unit operator, the new operator must:

(a) Meet the requirements of § 3281.11;

(b) Submit to BLM evidence of bonding acceptable under §§ 3214.13 or 3261.18(c) of this chapter, if operations have caused an adverse impact on Federal lands; and

(c) File with BLM written acceptance of the unit terms and obligations.

§ 3283.9 When is a change of unit operator effective?

The change is effective when BLM approves the new unit operator in writing.

§ 3283.10 If there is a change in the unit operator, when does the previous operator's liability end?

(a) The previous unit operator remains responsible for all duties and obligations of the unit agreement until BLM approves a new unit operator. The change of the unit operator does not release the previous unit operator from any liability for any obligations that accrued before the effective date of the change (see § 3215.14 of this chapter).

(b) The new unit operator is responsible for all unit duties and obligations after BLM approves the change.

§ 3283.11 Do the terms and conditions of a unit agreement modify Federal lease stipulations?

Nothing in a unit agreement modifies stipulations included in any Federal lease.

§ 3283.12 Are transferees and successors in interest of Federal geothermal leases bound by the terms and conditions of the unit agreement?

The terms and conditions of the unit agreement are binding on transferees

and successors in interest to Federal geothermal leases.

Subpart 3284—Unit Operations

§ 3284.1 What general standards apply to operations within a unit?

All unit operations must comply with:

(a) The terms and conditions of the unit agreement; and

(b) The standards and orders listed in the following chart:

Type of operation	Operational standards regulations (43 CFR)	Orders or instructions regulations (43 CFR)
Exploration	§ 3250.12	§ 3250.13
Drilling	§ 3260.11	§ 3260.12
Production or Utilization	§ 3270.11	§ 3270.12

§ 3284.2 What are the principal operational responsibilities of the unit operator?

The unit operator is responsible for:

(a) Diligently drilling for and developing in the public interest the geothermal resource occurring in the unit area. Only the unit operator is authorized to conduct:

(1) Any phase of drilling authorized under subpart 3260 of part 3200 of this chapter, unless another person is specifically authorized by BLM to conduct drilling (see § 3284.3);

(2) Resource development activities such as production and injection; and

(3) Delivery of the resource for commercial operation. An entity other than the unit operator, such as a facility operator, may purchase or utilize the resource produced from the unit.

(b) Providing written notification to BLM within 30 days after any changes to the commitment status of any lease or tract in the unit area (see §§ 3281.9 and 3284.11); and

(c) Insuring that the Federal Government receives all royalties, direct use fees, and rents for activities within the participating area.

§ 3284.3 What happens if the minimum initial unit obligations are not met?

(a) If the unit operator does not drill a well designed to produce or utilize geothermal resources in commercial quantities within the time frame specified in the unit agreement, or the unit operator relinquishes the unit agreement before meeting the minimum initial unit obligations:

(1) BLM will deem the unit agreement void as though it was never in effect;

(2) BLM will deem any lease extension based upon the existence of the unit as void retroactive to the date the unit was effective; and

(3) Any lease segregations based on the unit becomes invalid.

(b) BLM will send the unit operator a written decision confirming that the unit agreement is void.

§ 3284.4 How are unit agreement terms affected after completion of the initial unit well?

(a) Upon completion of a unit well that BLM determines will produce or utilize geothermal resources in commercial quantities, the unit operator must submit a proposed participating area application pursuant to § 3282.2, and no additional drilling to meet unit obligations is required. If no additional drilling in the unit occurs, the unit area will contract to the participating area as specified in the unit agreement.

(b) If a unit operator drills a well designed to produce or utilize geothermal resources in commercial quantities, but the well will not produce commercially or is not producible, the unit operator must continue drilling additional wells within the timeframes specified in the unit agreement until a unit well is completed that BLM determines will produce or utilize geothermal resources in commercial quantities. BLM may terminate a unit if additional wells are not drilled within the time frames specified in the unit agreement.

(c) The unit agreement will expire if no well that BLM determines will produce or utilize geothermal resources in commercial quantities is completed within the time frames specified in the unit agreement.

(d) BLM will send the unit operator a written decision confirming that the unit agreement has been terminated or has expired.

§ 3284.5 How do unit operations affect lease extensions?

(a) Once the minimum initial unit obligation is met, lease extensions based upon unit commitment will remain in effect until the unit is relinquished, expires, terminates, or the lease on which the initial unit obligation was met is eliminated from the unit.

(b) As long as there are commercial operations within the unit or there exists a unit well that BLM has determined is producing or utilizing geothermal resources in commercial quantities, lease extensions for any leases or portions of leases within the participating area will remain in effect as long as operations meet the requirements of § 3207.7 of this chapter.

§ 3284.6 May BLM authorize a working interest owner to drill a well on lands committed to the unit?

(a) BLM may authorize a working interest owner to drill a well on the interest owner's lease only if it is located outside of an established participating area. However, BLM will only do so upon determining that:

(1) The unit operator is not diligently pursuing unit development; and

(2) Drilling the well is in the public interest.

(b) If BLM determines that a working interest has completed a well that will produce or utilize geothermal resources in commercial quantities, the unit operator must

(1) Apply to revise the participating area to include the well; and

(2) Must operate the well.

§ 3284.7 May BLM authorize operations on uncommitted Federal leases located within a unit?

BLM may authorize a lessee/operator to conduct operations on an uncommitted Federal lease located within a unit, if the lessee/operator demonstrates to our satisfaction that operations on the lease are:

(a) In the public interest; and

(b) Will not unnecessarily affect unit operations.

§ 3284.8 May a unit have multiple operators?

A unit may have only one operator.

§ 3284.9 May BLM set or modify production or injection rates?

BLM may set or modify the quantity, rate, or location of production or injection occurring under a unit agreement.

§ 3284.10 What must a unit operator do to prevent or compensate for drainage?

The unit operator must take all necessary measures to prevent or

compensate for drainage of geothermal resources from unitized land by wells on land not subject to the unit agreement (see §§ 3210.22 and 3210.23 of this chapter).

§ 3284.11 Must the unit operator develop and operate on every lease or tract in the unit to comply with the obligations in the underlying leases or agreements?

The unit operator is not required to develop and operate on every lease or tract in the unit agreement to comply with the obligations in the underlying leases or agreement. The development and operation on any lands subject to a unit agreement is considered full performance of all obligations for development and operation for every separately owned lease or tract in the unit, regardless of whether there is development of any particular tract of the unit area.

§ 3284.12 When must the unit operator notify BLM of any changes of lease and tract commitment status?

The unit operator must provide updated documentation of commitment status (see §§ 3281.1(a)(2) and (3)) of all leases and tracts to BLM whenever a change in commitment, such as the expiration of a private lease, occurs. The unit operator must submit the documentation to BLM within 30 days after the change occurs. The unit operator must also notify all lessees and mineral interest owners of these changes.

Subpart 3285—Unit Termination

§ 3285.1 When may BLM terminate a unit agreement?

BLM may terminate a unit agreement if the unit operator does not comply with any term or condition of the unit agreement.

§ 3285.2 When may BLM approve a voluntary termination of a unit agreement?

BLM may approve the voluntary termination of a unit agreement at any time:

(a) After receiving a signed certification agreeing to the termination from a sufficient number of the working interest owners specified in the unit agreement who together represent a majority interest in the unit agreement; and

(b)(1) After the completion of the initial unit obligation well but before the establishment of a participating area; or

(2) After a participating area is established, upon receipt of information providing adequate assurance that:

(i) Diligent development and production of known commercial geothermal resources will occur; and

(ii) The public interest is protected.

Subpart 3286—Model Unit Agreement

§ 3286.1 Model Unit Agreement.

A unit agreement may use the following language:

Unit Agreement for the Development and Operation of the _____ Unit Area, County of _____, State of _____

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This Agreement entered into as of the _____ day of _____, 20____, by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the ''parties hereto''.

WITNESSETH:

Whereas the parties hereto are the owners of working, royalty, or other geothermal resources interests in land subject to this Agreement; and

Whereas the Geothermal Steam Act of 1970 (84 Stat. 1566), as amended, hereinafter referred to as the ''Act'' authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the purpose of more properly conserving the natural resources of any geothermal resources reservoir, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

Whereas the parties hereto hold sufficient interest in the _____ Unit Area covering the land herein described to effectively control operations therein; and

Whereas, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operations of the area subject to this Agreement under the terms, conditions, and limitations herein set forth;

Now, therefore, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined Unit Area, and agree severally among themselves as follows:

Article I—Enabling Act and Regulations

1.1 The Act and all valid pertinent regulations, including operating and unit plan regulations, heretofore or hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands.

1.2 As to non-Federal lands, the geothermal resources operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

Article II—Definitions

2.1 The following terms shall have the meanings here indicated:

(a) *Geothermal Lease.* A lease issued under the act of December 24, 1970 (84 Stat. 1566), as amended, pursuant to the leasing regulations contained in 43 CFR Group 3200 and, unless the context indicates otherwise, ''lease'' shall mean a geothermal lease.

(b) *Unit Area.* The area described in Article III of this Agreement.

(c) *Unit Operator.* The person, association, partnership, corporation, or other business entity designated under this Agreement to conduct operations on Unitized Land as specified herein.

(d) *Participating Area.* That area of the Unit deemed to be productive as described in Article 12.1 herein and areas committed to the Unit by the Authorized Officer needed for support of operations of the Unit Area. The production allocated for lands used for support of operations shall be approved by the Authorized Officer pursuant to Articles 12.1 and 13.1 herein.

(e) *Working Interest.* The interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in this Agreement, the owner of such interest is vested with the right to explore for, develop, produce and utilize such resources. The right delegated to the Unit Operator as such by this Agreement is not to be regarded as a Working Interest.

(f) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise powers vested in that officer.

(g) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise powers vested in that officer.

(h) *Authorized Officer.* Any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

Article III—Unit Area and Exhibits

3.1 The area specified on the map attached hereto marked ''Exhibit A'' is hereby designated and recognized as constituting the Unit Area, containing _____ acres, more or less. The above-described Unit Area shall be expanded, when practicable, to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this Agreement.

3.2 Exhibit A attached hereto and made a part hereof is a map showing the boundary of the Unit Area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator.

3.3 Exhibit B attached hereto and made a part thereof is a schedule showing to the extent known to the Unit Operator the acreage, percentage, and kind of ownership of geothermal resources interests in all lands in the Unit Area.

3.4 Exhibits A and B shall be revised by the Unit Operator whenever changes in the Unit Area render such revision necessary, or when requested by the authorized officer, and not less than five copies of the revised Exhibits shall be filed with the authorized officer.

Article IV—Contraction and Expansion of Unit Area

4.1 Unless otherwise specified herein, the expansion and/or contraction of the Unit Area contemplated in Article 3.1 hereof shall be effected in the following manner:

(a) The Unit Operator, either on demand of the authorized officer or on its own motion and after prior concurrence by the authorized officer, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the Unit Area, the reasons therefore, and the proposed effective date thereof, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the authorized officer, and copies thereof mailed to the last known address of each Working Interest Owner, Lessee, and Lessor whose interests are affected, advising that 30 days will be allowed to submit any objections to the Unit Operator.

(c) Upon expiration of the 30-day period provided in the preceding item 4.1(b), Unit Operator shall file with the authorized officer evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto that have been filed with the Unit Operator, together with an application in sufficient number, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the authorized officer, become effective as of the date prescribed in the notice thereof.

4.2 Unitized Leases, insofar as they cover any lands excluded from the Unit Area under any of the provisions of this Article IV, may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions contained in the Act, and the lease or leases and amendments thereto, except that operations and/or production under this Unit Agreement shall not serve to maintain or continue the excluded portion of any lease.

4.3 All legal subdivisions of unitized lands (i.e., 40 acres by Governmental survey or its nearest lot or tract equivalent in instances of irregular surveys), no part of which is entitled to be within a Participating Area on the 5th anniversary of the effective date of the initial Participating Area established under this Agreement, shall be eliminated automatically from this Agreement effective as of said 5th anniversary. Such lands shall no longer be a part of the Unit Area and shall no longer be subject to this Agreement, unless diligent drilling operations are in progress on an exploratory well on said 5th anniversary, in which event such lands shall not be eliminated from the Unit Area for as long as exploratory drilling operations are continued diligently with not more than six (6) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.4 An exploratory well, for the purposes of this Article IV, is defined as any well, regardless of surface location, projected for completion:

(a) In a zone or deposit below any zone or deposit for which a Participating Area has been established and is in effect; or

(b) At a subsurface location under Unitized Lands not entitled to be within a Participating Area.

4.5 In the event an exploratory well is completed during the six (6) months immediately preceding the 5th anniversary of the initial Participating Area established under this Agreement, lands not entitled to be within a Participating Area shall not be eliminated from this Agreement on said 5th anniversary, provided the drilling of another exploratory well is commenced under an approved Plan of Development within six (6) months after the completion of said well. In such event, the land not entitled to be in participation shall not be eliminated from the Unit Area so long as exploratory drilling operations are continued diligently with not more than six (6) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.6 With prior approval of the authorized officer, a period of time in excess of six (6) months may be allowed to elapse between the completion of one well and the commencement of the next well without the automatic elimination of nonparticipating acreage.

4.7 Unitized lands proved productive by drilling operations that serve to delay automatic of lands under this Article IV shall be incorporated into a Participating Area (or Areas) in the same manner as such lands would have been incorporated in such areas had such lands been proven productive during the year preceding said 5th anniversary.

4.8 In the event nonparticipating lands are retained under this Agreement after the 5th anniversary of the initial Participating Area as a result of exploratory drilling operations, all legal subdivisions of unitized land (i.e., 40 acres by Government survey or its nearest lot or tract equivalent in instances of irregular Surveys), no part of which is entitled to be within a Participating Area, shall be eliminated automatically as of the 183rd day, or such later date as may be established by the authorized officer, following the completion of the last well recognized as delaying such automatic elimination beyond the 5th anniversary of the initial Participating Area established under this Agreement.

Article V—Unitized Land and Unitized Substances

5.1 All land committed to this Agreement shall constitute land referred to herein as ''Unitized Land.'' All geothermal resources in and produced from any and all formations of the Unitized Land are unitized under the terms of this agreement and herein are called ''Unitized Substances.''

Article VI—Unit Operator

6.1 _____is hereby designated as Unit Operator, and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, production, distribution, and utilization of Unitized Substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in Unitized Substances, and the term ''Working Interest Owner,'' when used herein, shall include or refer to Unit Operator as the owner of a Working Interest when such an interest is owned by it.

Article VII—Resignation or Removal of Unit Operator

7.1 The Unit Operator shall have the right to resign. Such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator or terminate Unit Operators rights, as such, for a period of six (6) months after notice of its intention to resign has been served by Unit Operator on all Working Interest Owners and the authorized officer, nor until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment, whichever is required by the authorized officer, unless a new Unit Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

7.2 The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of Working Interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the authorized officer.

7.3 The resignation or removal of Unit Operator under this Agreement shall not terminate its right, title, or interest as the

owner of a Working Interest or other interest in Unitized Substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, material, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or, if no such new unit operator is elected, to the common agent appointed to represent the Working Interest Owners in any action taken hereunder, to be used for the purpose of conducting operations hereunder.

7.4 In all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the Working Interest Owners shall be jointly responsible for performance of the duties and obligations of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

7.5 The resignation or removal of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation or removal.

Article VIII—Successor Unit Operator

8.1 If, prior to the establishment of a Participating Area hereunder, the Unit Operator shall resign as Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by vote of the more than one-half of the owners of the Working Interests in Unitized Substances, based on their respective shares, on an acreage basis, in the Unitized Land.

8.2 If, after the establishment of a Participating Area hereunder, the Unit Operator shall resign as Unit Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by a vote of more than one-half of the owners of the Working Interests in Unitized Substances, based on their respective shares, on a participating acreage basis; provided that, if a majority but less than 60 percent of the Working Interest in the Participating Lands is owned by a party to this agreement, a concurring vote of one or more additional Working Interest Owners owning 10 percent or more of the Working Interest in the participating land shall be required to select a new Unit Operator.

8.3 The selection of a successor Unit Operator shall not become effective until:

(a) The Unit Operator so selected shall accept in writing the duties, obligations, and responsibilities of the Unit Operator; and

(b) The selection shall have been approved by the authorized officer.

8.4 If no successor Unit Operator is selected and qualified as herein provided, the authorized officer at his or her election may declare this Agreement terminated.

Article IX—Accounting Provisions and Unit Operating Agreement

9.1 Costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of Working Interests; all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of Working Interests, whether one or more, separately or collectively.

9.2 Any agreement or agreements entered into between the Working Interest Owners and the Unit Operator as provided in this Article, whether one or more, are herein referred to as the ''Unit Operating Agreement.''

9.3 The Unit Operating Agreement shall provide the manner in which the Working Interest Owners shall be entitled to receive their respective share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other contracts, and such other rights and obligations, as between Unit Operator and the Working Interest Owners.

9.4 Neither the Unit Operating Agreement nor any amendment thereto shall be deemed either to modify any of the terms and conditions of this Agreement or to relieve the Unit Operator of any right or obligation established under this Agreement.

9.5 In case of any inconsistency or conflict between this Agreement and the Unit Operating Agreement, this Agreement shall govern.

9.6 Three true copies of any Unit Operating Agreement executed pursuant to this Article IX shall be filed with the authorized officer prior to approval of this Agreement.

Article X—Rights and Obligations of Unit Operator

10.1 The right, privilege, and duty of exercising any and all rights of the parties hereto that are necessary or convenient for exploring, producing, distributing, or utilizing Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator as provided in this Agreement in accordance with a Plan of Development approved by the authorized officer.

10.2 Upon request by Unit Operator, acceptable evidence of title to geothermal resources interests in the Unitized Land shall be deposited with the Unit Operator and together with this Agreement shall constitute and define the rights, privileges, and obligations of Unit Operator.

10.3 Nothing in this Agreement shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that the Unit Operator, in its capacity as Unit Operator, shall exercise the rights of possession and use vested in the parties hereto only for the purposes specified in this Agreement.

10.4 The Unit Operator shall take such measures as the authorized officer deems appropriate and adequate to prevent drainage of Unitized Substances from Unitized Land by wells on land not subject to this Agreement.

10.5 The authorized officer is hereby vested with authority to alter or modify, from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this Agreement.

Article XI—Plan of Development

11.1 Concurrently with the submission of this Agreement to BLM for approval, the Unit Operator shall submit to BLM an acceptable initial Plan of Development. Said plan shall be as complete and adequate as the authorized officer may determine to be necessary for timely exploration and/or development, and to insure proper protection of the environment and conservation of the natural resources of the Unit Area.

11.2 Prior to the expiration of the initial Plan of Development, or any subsequent Plan of Development, Unit Operator shall submit for approval of the authorized officer an acceptable subsequent Plan of Development for the Unit Area which, when approved by the authorized officer, shall constitute the exploratory and/or development drilling and operating obligations of Unit Operator under this Agreement for the period specified therein.

11.3 Any Plan of Development submitted hereunder shall:

(a) Specify the number and locations of any exploration operations to be conducted or wells to be drilled, and the proposed order and time for such operations or drilling; and

(b) To the extent practicable, specify the operating practices regarded as necessary and advisable for proper conservation of natural resources and protection of the environment in compliance with section 1.1 of this Agreement.

11.4 The Plan of Development submitted concurrently with this Agreement for approval shall prescribe that the Unit Operator shall begin to drill a unit well identified in the Plan of Development approved by the authorized officer, unless on such effective date a well is being drilled conformably with the terms hereof, and thereafter continue such drilling diligently until the ____ formation has been tested or until at a lesser depth unitized substances shall be discovered that can be produced in paying quantities (i.e., quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the authorized officer that further drilling of said well would be unwarranted or impracticable; provided, however, that the Unit Operator shall not in any event be required to drill said well to a depth in excess of ____ feet.

11.5 The initial Plan of Development and/or subsequent Plan of Development submitted under this Article shall provide that the Unit Operator shall initiate a continuous drilling program providing for drilling of no less than one well at a time, and allowing no more than six (6) months time to elapse between completion and testing of one well and the beginning of the next well, until a well capable of producing or utilizing Unitized Substances in commercial quantities is completed to the satisfaction of the authorized officer, or until it is reasonably proven that the Unitized Land is incapable of producing Unitized Substances in paying quantities in the formations drilled under this Agreement.

11.6 The authorized officer may modify the exploration operation or drilling requirements of the initial or subsequent Plans of Development by granting reasonable extensions of time when, in his or her opinion, such action is warranted and in the public interest.

11.7 Until a well capable of producing or utilizing Unitized Substances in commercial quantities is completed, the failure of Unit Operator in a timely manner to conduct any exploration operations or drill any of the wells provided for in Plans of Development required under this Article XI or to submit a timely and acceptable subsequent Plan of Development, shall, after notice of default or notice of prospective default to Unit Operator by the authorized officer, and after failure of Unit Operator to remedy any actual default within a reasonable time (as determined by the authorized officer), result in automatic termination of this Agreement effective as of the date of the default, as determined by the authorized officer.

11.8 Separate Plans of Development may be submitted for separate productive zones, subject to the approval of the authorized officer. Also subject to the approval of the authorized officer, Plans of Development shall be modified or supplemented when necessary to meet changes in conditions or to protect the interest of all parties to this Agreement.

Article XII—Participating Areas

12.1 Prior to the commencement of production of Unitized Substances, the Unit Operator shall submit for approval by the authorized officer a schedule (or schedules) of all land then regarded as reasonably proven to be productive from a pool or deposit discovered or developed; all lands in said schedule (or schedules), on approval of the authorized officer, will constitute a Participating Area (or Areas), effective as of the date production commences or the effective date of this Unit Agreement, whichever is later. Said schedule (or schedules) shall also set forth the percentage of Unitized Substances to be allocated, as herein provided, to each tract in the Participating Area (or Areas), and shall govern the allocation of production, commencing with the effective date of the Participating Area.

12.2 A separate Participating Area shall be established for each separate pool or deposit of Unitized Substances or for any group thereof that is produced as a single pool or deposit, and any two or more Participating Areas so established may be combined into one, on approval of the authorized officer. The effective date of any Participating Area established after the commencement of actual production of Unitized Substances shall be the first of the month in which is obtained the knowledge or information on which the establishment of said Participating Area is based, unless a more appropriate effective date is proposed by the Unit Operator and approved by the authorized officer.

12.3 Any Participating Area (or Areas) established under 12.1 or 12.2 above shall, subject to the approval of the authorized officer, be revised from time to time to:

(a) Include additional land then regarded as reasonably proved to be productive from the pool or deposit for which the Participating Area was established;

(b) Include lands necessary to unit operations;

(c) Exclude land then regarded as reasonably proved not to be productive from the pool or deposit for which the Participating Area was established; or

(d) Exclude land not necessary to unit operations; and

(e) Revise the schedule (or schedules) of allocation percentages accordingly.

12.4 Subject to the limitation cited in 12.1 hereof, the effective date of any revision of a Participating Area established under Articles 12.1 or 12.2 shall be the first of the month in which is obtained the knowledge or information on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by the Unit Operator and approved by the authorized officer.

12.5 No land shall be excluded from a Participating Area on account of depletion of the Unitized Substances, except that any Participating Area established under the provisions of this Article XII shall terminate automatically whenever all operations are abandoned in the pool or deposit for which the Participating Area was established.

12.6 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of a Participating Area.

Article XIII—Allocation of Unitized Substances

13.1 All Unitized Substances produced from a Participating Area established under this Agreement shall be deemed to be produced equally, on an acreage basis, from the several tracts of Unitized Land within the Participating Area established for such production.

13.2 For the purpose of determining any benefits accruing under this Agreement, each Tract of Unitized Land shall have allocated to it such percentage of said production as the number of acres in the Tract included in the Participating Area bears to the total number of acres of Unitized Land in said Participating Area.

13.3 Allocation of production hereunder for purposes other than settlement of the royalty obligations of the respective Working Interest Owners shall be on the basis prescribed in the Unit Operating Agreement, whether in conformity with the basis of allocation set forth above or otherwise.

13.4 The Unitized Substances produced from a Participating Area shall be allocated as provided herein, regardless of whether any wells are drilled on any particular part or tract of said Participating Area.

Article XIV—Relinquishment of Leases

14.1 Pursuant to the provisions of the Federal leases and 43 CFR subpart 3213, a lessee of record shall, subject to the provisions of the Unit Operating Agreement, have the right to relinquish any of its interests in leases committed hereto, in whole or in part; provided, that no relinquishment shall be made of interests in land within a Participating Area without the prior approval of the authorized officer.

14.2 A Working Interest Owner may exercise the right to surrender, when such right is vested in it by any non-Federal lease, sublease, or operating agreement, provided that each party who will or might acquire the Working Interest in such lease by such surrender or by forfeiture is bound by the terms of this Agreement, and further provided that no relinquishment shall be made of such land within a Participating Area without the prior written consent of the non-Federal Lessor.

14.3 If, as the result of relinquishment, surrender, or forfeiture, the Working Interests become vested in the fee owner or lessor of the Unitized Substances, such owner may:

(a) Accept those Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or

(b) Lease the portion of such land as is included in a Participating Area established hereunder, subject to this Agreement and the Unit Operating Agreement, and provide for the independent operation of any part of such land that is not then included within a Participating Area established hereunder.

14.4 If the fee owner or lessor of the Unitized Substances does not, (1) accept the Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or (2) lease such lands as provided in 14.3 above within six (6) months after the relinquished, surrendered, or forfeited Working Interest becomes vested in said fee owner or lessor, the Working Interest benefits and obligations accruing to such land under this Agreement and the Unit Operating Agreement shall be shared by the owners of the remaining unitized Working Interests in accordance with their respective Working Interest ownerships, and such owners of Working Interests shall compensate the fee owner or lessor of Unitized Substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease or leases in effect when the Working Interests were relinquished, surrendered, or forfeited.

14.5 Subject to the provisions of 14.4 above, an appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of any surrendered or forfeited Working Interest subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within thirty (30) days.

14.6 In the event no Unit Operating Agreement is in existence and a mutually acceptable agreement cannot be consummated between the proper parties, the authorized officer may prescribe such reasonable and equitable conditions of agreement as he deems warranted under the circumstances.

14.7 The exercise of any right vested in a Working Interest Owner to reassign such Working Interest to the party from whom it was obtained shall be subject to the same conditions as set forth in this Article XIV in regard to the exercise of a right to surrender.

Article XV—Rentals

15.1 Any unitized lease on non-Federal land containing provisions that would terminate such lease unless (1) drilling operations are commenced upon the land covered thereby within the time therein

specified or (2) rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provisions of this Agreement, be deemed to accrue as to the portion of the lease not included within a Participating Area and become payable during the term thereof as extended by this Agreement, and until the required drillings are commenced upon the land covered thereby.

15.2 Rentals are payable on Federal leases on or before the anniversary date of each lease year.

15.3 Beginning with the lease year commencing on or after _____ and for each lease year thereafter, rental payments for lands of the United States subject to this Agreement shall be made on the following basis: An annual rental in the amount prescribed in unitized Federal leases, in no event creditable against production royalties, shall be paid for each acre or fraction thereof that is not within a Participating Area.

15.4 Rental due on the leases committed to the Unit shall be paid by Working Interest Owners responsible under existing contracts, laws, and regulations, or by the Unit Operator.

15.5 Settlement for royalty interest shall be made by Working Interest Owners responsible under existing contracts, laws, and regulations, or by the Unit Operator, on or before the last day of each month for Unitized Substances produced during the preceding calendar month.

15.6 Royalty due the United States shall be computed as provided in the operating regulations, and paid in value as to all Unitized Substances, on the basis of the amounts thereof allocated to unitized Federal land as provided herein, at the royalty rate or rates specified in the respective Federal leases.

15.7 Nothing herein shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any rental, or royalty due under their leases.

Article XVI—Operations on Nonparticipating Land

16.1 Any party hereto owning or controlling the Working Interest in any Unitized Land having a regular well location may, with the approval of the authorized officer and at such party's sole risk, costs, and expense, drill a well to test any formation of deposit for which a Participating Area has not been established or to test any formation or deposit for which a Participating Area has been established if such location is not within said Participating Area, unless within 30 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill such a well in like manner as other wells are drilled by the Unit Operator under this Agreement.

16.2 If any well drilled by a Working Interest Owner other than the Unit Operator proves that the land upon which said well is situated may properly be included in a Participating Area, such Participating Area shall be established or enlarged as provided in this Agreement, and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this Agreement and the Unit Operating Agreement.

Article XVII—Leases and Contracts Conformed and Extended

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or utilization of geothermal resources on lands committed to this Agreement, are hereby expressly modified and amended only to the extent necessary to make the same conform to the provisions hereof. Otherwise said leases, subleases, and contracts shall remain in full force and effect.

17.2 The parties hereto consent that the Secretary shall, by his or her approval hereof, modify and amend the Federal leases committed hereto to the extent necessary to conform said leases to the provisions of this Agreement.

17.3 The development and/or operation of lands subject to this Agreement under the terms hereof shall be deemed full performance of any obligations for development and operation with respect to each and every separately owned tract subject to this Agreement, regardless of whether there is any development of any particular tract of the Unit Area.

17.4 Drilling and/or producing operations performed hereunder upon any tract of Unitized Lands will be deemed to be performed upon and for the benefit of each and every tract of Unitized Land.

17.5 Suspension of operations and/or production on all Unitized Lands pursuant to direction or consent of the Secretary or his duly authorized representative shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of Unitized Land. A suspension of operations and/or production limited to specified lands shall be applicable only to such lands.

17.6 Subject to the provisions of Article XV hereof and 17.10 of this Article, each lease, sublease, or contract relating to the exploration, drilling, development, or utilization of geothermal resources of lands other than those of the United States committed to this Agreement, is hereby extended beyond any such term provided therein so that it shall be continued for and during the term of this Agreement.

17.7 Subject to the lease renewal and the readjustment provision of the Act, any Federal lease committed hereto may, as to the Unitized Lands, be continued for the term so provided therein, or as extended by law. This subsection shall not operate to extend any lease or portion thereof as to lands excluded from the Unit Area by the contraction thereof.

17.8 Each sublease or contract relating to the operations and development of Unitized Substances from lands of the United States committed to this Agreement shall be continued in force and effect for and during the term of the underlying lease.

17.9 Any Federal lease heretofore or hereafter committed to any such unit plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed, as of the effective date of unitization.

17.10 In the absence of any specific lease provision to the contrary, any lease, other than a Federal lease, having only a portion of its land committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions, commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

17.11 Upon termination of this Agreement, the leases covered hereby may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions of the Act, the lease or leases, and amendments thereto.

Article XVIII—Effective Date and Term

18.1 This Agreement shall become effective upon approval by the Secretary or his duly authorized representative, and shall terminate five (5) years from said effective date unless,

(a) Such date of expiration is extended by the authorized officer;

(b) Unitized Substances are produced or utilized in commercial quantities in which event this Agreement shall continue for so long as Unitized Substances are produced or utilized in commercial quantities; or

(c) This Agreement is terminated prior to the end of said five (5) year period as heretofore provided.

18.2 This Agreement may be terminated at any time by the owners of a majority of the Working Interests on an acreage basis, with the approval of the authorized officer. Notice of any such approval shall be given by the Unit Operator to all parties hereto.

Article XIX—Appearances

19.1 Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior, and to appeal from decisions, orders or rulings issued under the regulations of said Department, or to apply for relief from any of said regulations or in any proceedings relative to operations before the Department of the Interior or any other legally constituted authority: Provided, however, That any interested parties shall also have the right, at their own expense, to be heard in any such proceeding.

Article XX—No Waiver of Certain Rights

20.1 Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the State wherein lands subject to this Agreement are located, or of the United States, or regulations issued thereunder, in any way affecting such party, or as a waiver by any such party of any right beyond his or its authority to waive.

Article XXI—Unavoidable Delay

21.1 The obligations imposed by this Agreement requiring Unit Operator to commence or continue drilling or to produce or utilize Unitized Substances from any of the land covered by this Agreement, shall be suspended while, but only so long as, Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, Acts of God, Federal or other applicable law, Federal or other authorized governmental agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials in open market, or other matters beyond the reasonable control of Unit Operator, whether similar to matters herein enumerated or not.

21.2 No unit obligation that is suspended under this section shall become due less than thirty (30) days after it has been determined that the suspension is no longer applicable.

21.3 Determination of creditable ''Unavoidable Delay'' time shall be made by the Unit Operator, subject to approval by the authorized officer.

Article XXII—Postponement of Obligations

22.1 Notwithstanding any other provisions of this Agreement, the Authorized officer, on his own initiative or upon appropriate justification by Unit Operator, may postpone any obligation established by and under this Agreement to commence or continue drilling or to operate on or produce Unitized Substances from lands covered by this Agreement when, in his judgment, circumstances warrant such action.

Article XXIII—Nondiscrimination

23.1 In connection with the performance of work under this Agreement, the Operator agrees to comply with all of the provisions of section 202(1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), which are hereby incorporated by reference in this Agreement.

Article XXIV—Counterparts

24.1 This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instruments in writing specifically referring hereto, and shall be binding upon all parties who have executed such a counterpart, ratification, or consent hereto, with the same force and effect as if all such parties had signed the same document.

Article XXV—Subsequent Joinder

25.1 If the owner of any substantial interest in geothermal resources under a tract within the Unit Area fails or refuses to subscribe or consent to this Agreement, the owner of the Working Interest in that tract may withdraw said tract from this Agreement by written notice delivered to the authorized officer and the Unit Operator prior to the approval of this Agreement by the authorized officer.

25.2 Any geothermal resources interests in lands within the Unit Area not committed hereto prior to approval of this Agreement may thereafter be committed by the owner or owners thereof subscribing or consenting to this Agreement, and, if the interest is a Working Interest, by the owner of such interest also subscribing to the Unit Operating Agreement.

25.3 After operations are commenced hereunder, the right of subsequent joinder, as provided in this Article XXV, by a Working Interest Owner is subject to such requirements or approvals, if any, pertaining to such joinder, as may be provided for in the Unit Operating Agreement. Joinder to the Unit Agreement by a Working Interest Owner at any time must be accompanied by appropriate joinder to the Unit Operating Agreement, if more than one committed Working Interest Owner is involved, in order for the interest to be regarded as committed to this Unit Agreement.

25.4 After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the Working Interest Owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this Agreement unless the corresponding Working Interest is committed hereto.

25.5 Except as may otherwise herein be provided, subsequent joinders to this Agreement shall be effective as of the first day of the month following the filing with the authorized officer of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this Agreement, unless objection to such joinder is duly made within sixty (60) days by the authorized officer.

Article XXVI—Covenants Run With the Land

26.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance, of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

26.2 No assignment or transfer of any Working Interest or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

Article XXVII—Notices

27.1 All notices, demands, or statements required hereunder to be given or rendered to the parties hereto shall be deemed fully given if given in writing and personally delivered to the party or sent by postpaid registered or certified mail, addressed to such party or parties at their respective addresses set forth in connection with the signatures hereto, or to the ratification or consent hereof, or to such other address as any such party may have furnished in writing to the party sending the notice, demand, or statement.

Article XXVIII—Loss of Title

28.1 In the event title to any tract of Unitized Land shall fail and the true owner cannot be induced to join in this Agreement, such tract shall be automatically regarded as not committed hereto, and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title.

28.2 In the event of a dispute as to title to any royalty, Working Interest, or other interests subject hereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled: Provided, That, as to Federal land or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the authorized officer to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Article XXIX—Taxes

29.1 The Working Interest Owners shall render and pay for their accounts and the accounts of the owners of nonworking interests all valid taxes on or measured by the Unitized Substances in and under, or that may be produced, gathered, and sold or utilized from, the land subject to this Agreement after the effective date hereof.

29.2 The Working Interest Owners on each tract may charge a proper proportion of the taxes paid under 29.1 hereof to the owners of nonworking interests in said tract, and may reduce the allocated share of each royalty owner for taxes so paid. No taxes shall be charged to the United States or the State of _____ or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

Article XXX—Relation of Parties

30.1 It is expressly agreed that the relation of the parties hereto is that of independent contractors, and nothing in this Agreement contained, expressed, or implied, nor any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

Article XXXI—Special Federal Lease Stipulations and/or Conditions

31.1 Nothing in this Agreement shall modify special lease stipulations and/or conditions applicable to lands of the United States. No modification of the conditions necessary to protect the lands or functions of lands under the jurisdiction of any Federal agency is authorized except with prior consent in writing whereby the authorizing official specifies the modification permitted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and have set opposite their respective names the date of execution.

Unit operator (as unit operator and as working interest owner):

By:

_____

Name:

_____

Title:

Date:

Subpart 3287—Relief and Appeals

§ 3287.1 May the unit operator request a suspension of unit obligations or development requirements?

The unit operator may provide a written request to BLM to suspend any or all obligations under the unit agreement. BLM will specify the term of the suspension and any requirements the unit operator must meet for the suspension to remain in effect.

§ 3287.2 When may BLM grant a suspension of unit obligations?

(a) BLM may grant a suspension of unit obligations when, despite the exercise of due care and diligence, the unit operator is prevented from complying with such obligations, in whole or in part, by:

(1) Acts of God;

(2) Federal, State, or municipal laws;

(3) Labor strikes;

(4) Unavoidable accidents;

(5) Uncontrollable delays in transportation;

(6) The inability to obtain necessary materials or equipment in the open market; or

(7) Other circumstances, which BLM determines are beyond the reasonable control of the unit operator, such as agency time frames required to complete environmental documents.

(b) BLM may deny the request for suspension of unit obligations when the suspension would involve a lengthy or indefinite period. For example, BLM might not approve a suspension of initial drilling obligations due to a unit operator's inability to obtain an electrical sales contract, or when poor economics affect the electrical generation market, limiting the opportunity to obtain a viable sales contract. BLM may grant a suspension of subsequent drilling obligations when it is in the public interest.

§ 3287.3 How does a suspension of unit obligations affect the terms of the unit agreement?

(a) At BLM's discretion, we may suspend any terms of the unit agreement during the period a suspension is effective. During the period of the suspension, the involved unit terms are tolled. The suspension may not relieve the unit operator of its responsibility to meet other requirements of the unit agreement. For example, the unit operator may continue to be required to diligently develop or produce the resource during a suspension of drilling obligations.

(b) The unit operator must ensure all interests in the agreement are notified of any changes regarding the agreement.

§ 3287.4 May a decision made by BLM under this subpart be appealed?

A unit operator or any other adversely affected person may appeal a BLM decision regarding unit administration or operations in accordance with § 3200.5 of this chapter.

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