

## **Title 43: Public Lands: Interior**

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### **PART 3900—OIL SHALE MANAGEMENT—GENERAL**

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### **Subpart 3900—Oil Shale Management—Introduction**

#### **§ 3900.2 Definitions.**

As used in this part and parts 3910 through 3930 of this chapter, the term:

*Acquired lands* means lands which the United States obtained through purchase, gift, or condemnation, including mineral estates associated with lands previously disposed of under the public land laws, including the mining laws.

*Act* means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.* ).

*BLM* means the Bureau of Land Management and includes the individual employed by the Bureau of Land Management authorized to perform the duties set forth in this part and parts 3910 through 3930.

*Commercial quantities* means production of shale oil quantities in accordance with the approved Plan of Development for the proposed project through the research, development, and demonstration activities conducted on the research, development, and demonstration (R, D and D) lease, based on, and at the conclusion of which, there is a reasonable expectation that the expanded operation would provide a positive return after all costs of production have been met, including the amortized costs of the capital investment.

*Department* means the Department of the Interior.

*Diligent development* means achieving or completing the prescribed milestones listed in §3930.30 of this chapter.

*Entity* means a person, association, or corporation, or any subsidiary, affiliate, corporation, or association controlled by or under common control with such person, association, or corporation.

*Exploration* means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal oil shale and its environment including:

(1) The strata below the Federal oil shale;

- (2) The overburden;
- (3) The strata immediately above the Federal oil shale; and
- (4) The hydrologic conditions associated with the Federal oil shale.

*Exploration license* means a license issued by the BLM that allows the licensee to explore unleased oil shale deposits to obtain geologic, environmental, and other pertinent data concerning the deposits. An exploration license confers no preference to a lease to develop oil shale.

*Exploration plan* means a plan prepared in sufficient detail to show the:

- (1) Location and type of exploration to be conducted;
- (2) Environmental protection procedures to be taken;
- (3) Present and proposed roads, if any; and
- (4) Reclamation and abandonment procedures to be followed upon completion of operations.

*Fair market value (FMV)* means the monetary amount for which the oil shale deposit would be leased by a knowledgeable owner willing, but not obligated, to lease to a knowledgeable purchaser who desires, but is not obligated, to lease the oil shale deposit.

*Federal lands* means any lands or interests in lands, including oil shale interests underlying non-Federal surface, owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands.

*Infrastructure* means all support structures necessary for the production or development of shale oil, including, but not limited to:

- (1) Offices;
- (2) Shops;
- (3) Maintenance facilities;
- (4) Pipelines;
- (5) Roads;
- (6) Electrical transmission lines;
- (7) Well bores;
- (8) Storage tanks;
- (9) Ponds;
- (10) Monitoring stations;
- (11) Processing facilities—retorts; and
- (12) Production facilities.

*In situ operation* means the processing of oil shale in place.

*Interest in a lease, application, or bid* means any:

- (1) Record title interest;
- (2) Overriding royalty interest;
- (3) Working interest;
- (4) Operating rights or option or any agreement covering such an interest; or
- (5) Participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from a lease based on or under any agreement or understanding existing when an application was filed or entered into while the lease application or bid is pending.

*Kerogen* means the solid, organic substance in sedimentary rock that yields oil when it undergoes destructive distillation.

*Lease* means a Federal lease issued under the mineral leasing laws, which grants the exclusive right to explore for and extract a designated mineral.

*Lease bond* means the bond or equivalent security given to the Department to assure performance of all obligations associated with all lease terms and conditions.

*Maximum economic recovery (MER)* means the prevention of wasting of the resource by recovering the maximum amount of the resource that is technologically and economically possible.

*Mining waste* means all tailings, dumps, deleterious materials, or substances produced by mining, retorting, or in-situ operations.

*MMS* means the Minerals Management Service.

*Oil shale* means a fine-grained sedimentary rock containing:

- (1) Organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum; and
- (2) Inorganic matter, which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

*Permit* means any of the required approvals that are issued by Federal, state, or local agencies.

*Plan of development (POD)* means the plan created for oil shale operations that complies with the requirements of the Act and that details the plans, equipment, methods, and schedules to be used in oil shale development.

*Production* means:

- (1) The extraction of shale oil, shale gas, or shale oil by-products through surface retorting or in situ recovery methods; or
- (2) The severing of oil shale rock through surface or underground mining methods.

*Proper BLM office* means the Bureau of Land Management office having jurisdiction over the lands under application or covered by a lease or exploration license and subject to the regulations in this part and in parts 3910 through 3930 of this chapter (see subpart 1821 of part 1820 of this chapter for a list of BLM state offices).

*Public lands* means lands, i.e., surface estate, mineral estate, or both, which:

- (1) Never left the ownership of the United States, including minerals reserved when the lands were patented;
- (2) Were obtained by the United States in exchange for public lands;
- (3) Have reverted to the ownership of the United States; or
- (4) Were specifically identified by Congress as part of the public domain.

*Reclamation* means the measures undertaken to bring about the necessary reconditioning of lands or waters affected by exploration, mining, in situ operations, onsite processing operations or waste disposal in a manner which will meet the requirements imposed by the BLM under applicable law.

*Reclamation bond* means the bond or equivalent security given to the BLM to assure performance of all obligations relating to reclamation of disturbed areas under an exploration license or lease.

*Secretary* means the Secretary of the Interior.

*Shale gas* means the gaseous hydrocarbon-bearing products of surface retorting of oil shale or of in situ extraction that is not liquefied into shale oil. In addition to hydrocarbons, shale gas might include other gases such as carbon dioxide, nitrogen, helium, sulfur, other residual or specialty gases, and entrained hydrocarbon liquids.

*Shale oil* means synthetic petroleum derived from the destructive distillation of oil shale.

*Sole party in interest* means a party who alone is or will be vested with all legal and equitable rights and responsibilities under a lease, bid, or application for a lease.

*Surface management agency* means the Federal agency with jurisdiction over the surface of federally-owned lands containing oil shale deposits.

*State Director* means an employee of the Bureau of Land Management designated as the chief administrative officer of one of the BLM's 12 administrative areas administered by a state office.

*Surface retort* means the above-ground facility used for the extraction of kerogen by heating mined shale.

*Surface retort operation* means the extraction of kerogen by heating mined shale in an above-ground facility.

*Synthetic petroleum* means synthetic crude oil manufactured from shale oil and suitable for use as a refinery feedstock or for petrochemical production.

### **§ 3900.5 Information collection.**

(a) OMB has approved the information collection requirements in parts 3900 through 3930 of this chapter under 44 U.S.C. 3501 *et seq.* The table in paragraph (d) of this section lists the subpart in the rule requiring the information and its title, provides the OMB control number, and summarizes the reasons for collecting the information and how the BLM uses the information.

(b) Respondents are oil shale lessees and operators. The requirement to respond to the information collections in these parts are mandated under the Energy Policy Act of 2005 (EP Act) (42 U.S.C. 15927), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*, including 43 U.S.C. 1732).

(c) The Paperwork Reduction Act of 1995 requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) The BLM is collecting this information for the reasons given in the following table:

<b>43 CFR Parts 3900–3930, General (1004– 0201)</b>	<b>Reasons for collecting information and how used</b>
Section 3904.12 Section 3904.14(c) (1)	Prospective lessee or licensee must furnish a bond before a lease or exploration license may be issued or transferred or a plan of development is approved. The BLM will review the bond and, if adequate as to amount and execution, will accept it in order to indemnify the United States against default on payments due or other performance obligations. The BLM may also adjust the bond amount to reflect changed conditions. The BLM will cancel the bond when all requirements are satisfied.
Section 3910.31 Section 3910.44	For those lands where no exploration data is available, the lease applicant may apply for an exploration license to conduct exploration on unleased public lands to determine the extent and specific characteristics of the Federal oil shale resource. The BLM will use the information in the application to:
	(1) Locate the proposed exploration site;
	(2) Determine if the lands are subject to entry for exploration;
	(3) Prepare a notice of invitation to other parties to participate in the exploration; and
	(4) Ensure the exploration plan is adequate to safeguard resource values, and public and worker health and safety.
	The BLM will use this information from a licensee to determine if it will offer the land area for lease.
Section 3921.30	Corporations, associations, and individuals may submit expressions of leasing interest for specific areas to assist the applicable BLM State Director in determining whether or not to lease oil shale. The information provided will be used in the consultation with the governor of the affected state and in setting a geographic area for which a call for applications will be requested.
Sections 3922.20	Entities interested in leasing the Federal oil shale resource must file

and 3922.30	an application in a geographic area for which the BLM has issued a "Call for Applications." The information provided by the applicant will be used to evaluate the impacts of issuing a proposed lease on the human environment. Failure to provide the requested additional information may result in suspension or termination of processing of the application or in a decision to deny the application.
Section 3924.10	Prospective lessees will be required to submit a bid at a competitive sale in order to be issued a lease.
Section 3926.10(c)	The lessee of an R, D and D lease may apply for conversion of the R, D and D lease to a commercial lease.
Section 3930.11(b) Section 3930.20(b)	The records, logs, and samples provide information necessary to determine the nature and extent of oil shale resources on Federal lands and to monitor and adjust the extent of the oil shale reserve.
Section 3931.11	The POD must provide for reasonable protection and reclamation of the environment and the protection and diligent development of the oil shale resources in the lease.
Section 3931.30	The BLM may, in the interest of Conservation, order or agree to a suspension of operations and production.
Section 3931.41	Except for casual use, before conducting any exploration operations on federally-leased or federally-licensed lands, the lessee must submit an exploration plan to the BLM for approval.
Section 3931.50	Approved exploration, mining and in situ development plans may be modified by the operator or lessee to adjust to changed conditions, new information, improved methods, and new or improved technology, or to correct an oversight.
Section 3931.70	Production of all oil shale products or byproducts must be reported to the BLM on a monthly basis.
Section 3931.80	Within 30 days after drilling completion the operator or lessee must submit to the BLM a signed copy of records of all core or test holes made on the lands covered by the lease or exploration license.
Sections 3932.10(b) and 3932.30(c)	A lessee may apply for a modification of a lease to include additional Federal lands adjoining those in the lease.
Section 3933.31	Any lease may be assigned or subleased, and any exploration license may be assigned, in whole or in part, to any person, association, or corporation that meets the qualification requirements at subpart 3902.
Section 3934.10	A lease or exploration license may be surrendered in whole or in part.

Section 3935.10	Operators or lessees must maintain production and sale records which must be available for the BLM's examination during regular business hours.
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#### **§ 3900.10 Lands subject to leasing.**

The BLM may issue oil shale leases under this part on all Federal lands except:

- (a) Those lands specifically excluded from leasing by the Act;
- (b) Lands within the boundaries of any unit of the National Park System, except as expressly authorized by law (Glen Canyon National Recreation Area, Lake Mead National Recreation Area, and the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area);
- (c) Lands within incorporated cities, towns and villages; and
- (d) Any other lands withdrawn from leasing.

#### **§ 3900.20 Appealing the BLM's decision.**

Any party adversely affected by a BLM decision made under this part or parts 3910 through 3930 of this chapter may appeal the decision under part 4 of this title. All decisions and orders by the BLM under these parts remain effective pending appeal unless the BLM decides otherwise. A petition for the stay of a decision may be filed with the Interior Board of Land Appeals (IBLA).

#### **§ 3900.30 Filing documents.**

- (a) All necessary documents must be filed in the proper BLM office. A document is considered filed when the proper BLM office receives it with any required fee.
- (b) All information submitted to the BLM under the regulations in this part or parts 3910 through 3930 will be available to the public unless exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), under part 2 of this title, or unless otherwise provided for by law.

#### **§ 3900.40 Multiple use development of leased or licensed lands.**

- (a) The granting of an exploration license or lease for the exploration, development, or production of deposits of oil shale does not preclude the BLM from issuing other exploration licenses or leases for the same lands for deposits of other minerals. Each exploration license or lease reserves the right to allow any other uses or to allow disposal of the leased lands if it does not unreasonably interfere with the exploration and mining operations of the lessee. The lessee or the licensee must make all reasonable efforts to avoid interference with other such authorized uses.
- (b) Subsequent lessee or licensee will be required to conduct operations in a manner that will not interfere with the established rights of existing lessees or licensees.
- (c) When the BLM issues an oil shale lease, it will cancel all oil shale exploration licenses for the leased lands.

#### **§ 3900.50 Land use plans and environmental considerations.**

- (a) Any lease or exploration license issued under this part or parts 3910 through 3930 of this chapter will be issued in conformance with the decisions, terms, and conditions of a comprehensive land use plan developed under part 1600 of this chapter.



(b) Before a lease or exploration license is issued, the BLM, or the appropriate surface management agency, must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA).

(c) Before the BLM approves a POD, the BLM must comply with NEPA, in cooperation with the surface management agency when possible, if the surface is managed by another Federal agency.

**§ 3900.61 Federal minerals where the surface is owned or administered by other Federal agencies, by state agencies or charitable organizations, or by private entities.**

(a) *Public lands.* Unless consent is required by law, the BLM will issue a lease or exploration license only after the BLM has consulted with the surface management agency on public lands where the surface is administered by an agency other than the BLM. The BLM will not issue a lease or an exploration license on lands to which the surface managing agency withholds consent required by statute.

(b) *Acquired lands.* The BLM will issue a lease on acquired lands only after receiving written consent from an appropriate official of the surface management agency.

(c) *Lands covered by lease or license.* If a Federal surface management agency outside of the Department has required special stipulations in the lease or license or has refused consent to issue the lease or license, an applicant may pursue the administrative remedies to challenge that decision offered by that particular surface management agency, if any. If the applicant notifies the BLM within 30 calendar days after receiving the BLM's decision that the applicant has requested the surface management agency to review or reconsider its decision, the time for filing an appeal to the IBLA under part 4 of this title is suspended until a decision is reached by such agency.

(d) The BLM will not issue a lease or exploration license on National Forest System Lands without the consent of the Forest Service.

(e) Ownership of surface overlying Federal minerals by states, charitable organizations, or private entities. Where the United States has conveyed title to the surface of lands to any state or political subdivision, agency, or instrumentality thereof, including a college or any other educational corporation or association, to a charitable or religious corporation or association, or to a private entity, the BLM will send such surface owners written notification by certified mail of the application for exploration license or lease. In the written notification, the BLM will give the surface owners a reasonable time, not to exceed 90 calendar days, within which to suggest any lease stipulations necessary for the protection of existing surface improvements or uses and to set forth the facts supporting the necessity of the stipulations, or to file any objections it may have to the issuance of the lease or license. The BLM makes the final decision as to whether to issue the lease or license and on what terms based on a determination as to whether the interests of the United States would best be served by issuing the lease or license with the particular stipulations. This is true even in cases where the party controlling the surface opposes the issuance of a lease or license or wishes to place restrictive stipulations on the lease.

**§ 3900.62 Special requirements to protect the lands and resources.**

The BLM will specify stipulations in a lease or exploration license to protect the lands and their resources. This may include stipulations required by the surface management agency or recommended by the surface management agency or non-Federal surface owner and accepted by the BLM.

**Subpart 3901—Land Descriptions and Acreage**

**§ 3901.10 Land descriptions.**

(a) All lands in an oil shale lease must be described by the legal subdivisions of the public land survey system or if the lands are unsurveyed, the legal description by metes and bounds.

(b) Unsurveyed lands will be surveyed, at the cost of the lease applicant, by a surveyor approved or employed by the BLM.

### **§ 3901.20 Acreage limitations.**

No entity may hold more than 50,000 acres of Federal oil shale leases on public lands and 50,000 acres on acquired lands in any one state. Oil shale lease acreage does not count toward acreage limitations associated with leases for other minerals.

### **§ 3901.30 Computing acreage holdings.**

In computing the maximum acreage an entity may hold under a Federal lease, on either public lands or acquired lands, in any one state, acquired lands and public lands are counted separately. An entity may hold up to the maximum acreage of each at the same time.

## **Subpart 3902—Qualification Requirements**

### **§ 3902.10 Who may hold leases.**

(a) The following entities may hold leases or interests therein:

- (1) Citizens of the United States;
- (2) Associations (including partnerships and trusts) of such citizens; and
- (3) Corporations organized under the laws of the United States or of any state or territory thereof.

(b) Citizens of a foreign country may only hold interest in leases through stock ownership, stock holding, or stock control in such domestic corporations. Foreign citizens may hold stock in United States corporations that hold leases if the Secretary has not determined that laws, customs, or regulations of their country deny similar privileges to citizens or corporations of the United States.

(c) A minor may not hold a lease. A legal guardian or trustee of a minor may hold a lease.

(d) An entity must be in compliance with Section 2(a)(2)(A) of the Act in order to hold a lease. If the BLM erroneously issues a lease to an entity that is in violation of Section 2(a)(2)(A) of the Act, the BLM will void the lease.

### **§ 3902.21 Filing of qualification evidence.**

Applicants must file with the BLM a statement and evidence that the qualification requirements in this subpart are met. These may be filed separately from the lease application, but must be filed in the same office as the application. After the BLM accepts the applicant's qualifications, any additional information may be provided to the same BLM office by referring to the serial number of the record in which the evidence is filed. All changes to the qualifications statement must be in writing. The evidence provided must be current, accurate, and complete.

### **§ 3902.22 Where to file.**

The lease application and qualification evidence must be filed in the proper BLM office (see subpart 1821 of part 1820 of this chapter).

### **§ 3902.23 Individuals.**

Individuals who are applicants must provide to the BLM a signed statement showing:

- (a) U.S. citizenship; and

(b) That acreage holdings do not exceed the limits in §3901.20 of this chapter. This includes holdings through a corporation, association, or partnership in which the individual is the beneficial owner of more than 10 percent of the stock or other instruments of control.

**§ 3902.24 Associations, including partnerships.**

Associations that are applicants must provide to the BLM:

(a) A signed statement that:

(1) Lists the names, addresses, and citizenship of all members of the association who own or control 10 percent or more of the association or partnership, and certifies that the statement is true;

(2) Lists the names of the members authorized to act on behalf of the association; and

(3) Certifies that the association or partnership's acreage holdings and those of any member under paragraph (a)(1) of this section do not exceed the acreage limits in §3901.20 of this chapter; and

(b) A copy of the articles of association or the partnership agreement.

**§ 3902.25 Corporations.**

Corporate officers or authorized attorneys-in-fact who represent applicants must provide to the BLM a signed statement that:

(a) Names the state or territory of incorporation;

(b) Lists the name and citizenship of, and percentage of stock owned, held, or controlled by, any stockholder owning, holding, or controlling more than 10 percent of the stock of the corporation, and certifies that the statement is true;

(c) Lists the names of the officers authorized to act on behalf of the corporation; and

(d) Certifies that the corporation's acreage holdings, and those of any stockholder identified under paragraph (b) of this section, do not exceed the acreage limits in §3901.20 of this chapter.

**§ 3902.26 Guardians or trustees.**

Guardians or trustees for a trust, holding on behalf of a beneficiary, who are applicants must provide to the BLM:

(a) A signed statement that:

(1) Provides the beneficiary's citizenship;

(2) Provides the guardian's or trustee's citizenship;

(3) Provides the grantor's citizenship, if the trust is revocable; and

(4) Certifies the acreage holdings of the beneficiary, the guardian, trustee, or grantor, if the trust is revocable, do not exceed the aggregate acreage limitations in §3901.20 of this chapter; and

(b) A copy of the court order or other document authorizing or creating the trust or guardianship.

### **§ 3902.27 Heirs and devisees.**

If an applicant or successful bidder for a lease dies before the lease is issued:

(a) The BLM will issue the lease to the heirs or devisees, or their guardian, if probate of the estate has been completed or is not required. Before the BLM will recognize the heirs or devisees or their guardian as the record title holders of the lease, they must provide to the proper BLM office:

(1) A certified copy of the will or decree of distribution, or if no will or decree exists, a statement signed by the heirs that they are the only heirs and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and

(2) A statement signed by each of the heirs or devisees with reference to citizenship and holdings as required by §3902.23 of this chapter. If the heir or devisee is a minor, the guardian or trustee must sign the statement; and

(b) The BLM will issue the lease to the executor or administrator of the estate if probate is required, but is not completed. In this case, the BLM considers the executor or administrator to be the record title holder of the lease. Before the BLM will issue the lease to the executor or administrator, the executor or administrator must provide to the proper BLM office:

(1) Evidence that the person who, as executor or administrator, submits lease and bond forms has authority to act in that capacity and to sign those forms;

(2) A certified list of the heirs or devisees of the deceased; and

(3) A statement signed by each heir or devisee concerning citizenship and holdings, as required by §3902.23 of this chapter.

### **§ 3902.28 Attorneys-in-fact.**

Attorneys-in-fact must provide to the proper BLM office evidence of the authority to act on behalf of the applicant and a statement of the applicant's qualifications and acreage holdings if it is also empowered to make this statement. Otherwise, the applicant must provide the BLM this information separately.

### **§ 3902.29 Other parties in interest.**

If there is more than one party in interest in an application for a lease, include with the application the names of all other parties who hold or will hold any interest in the application or in the lease. All interested parties who wish to hold an interest in a lease must provide to the BLM the information required by this subpart to qualify to hold a lease interest.

## **Subpart 3903—Fees, Rentals, and Royalties**

### **§ 3903.20 Forms of payment.**

All payments must be by U.S. postal money order or negotiable instrument payable in U.S. currency. In the case of payments made to the MMS, such payments must be made by electronic funds transfer (see 30 CFR part 218 for the MMS's payment procedures).

### **§ 3903.30 Where to submit payments.**

(a) All filing and processing fees, all first-year rentals, and all bonuses for leases issued under this part or parts 3910 through 3930 of this chapter must be paid to the BLM state office that manages the lands covered by the application, lease, or exploration license, unless the BLM designates a different state office.

The first one-fifth bonus installment is paid to the appropriate BLM state office. All remaining bonus installment payments are paid to the MMS.

(b) All second-year and subsequent rentals and all other payments for leases are paid to the MMS.

(c) All royalties on producing leases and all payments under leases in their minimum production period are paid to the MMS.

#### **§ 3903.40 Rentals.**

(a) The rental rate for oil shale leases is \$2.00 per acre, or fraction thereof, payable annually on or before the anniversary date of the lease. Rentals paid for any 1 year are credited against any production royalties accruing for that year.

(b) The BLM will send a notice demanding payment of late rentals. Failure to provide payment within 30 calendar days after notification will result in the BLM taking action to cancel the lease (see §3934.30 of this chapter).

#### **§ 3903.51 Minimum production and payments in lieu of production.**

(a) Each lease must meet its minimum annual production amount of shale oil or make a payment in lieu of production for any particular lease year, beginning with the 10th lease year.

(b) The minimum payment in lieu of annual production is established in the lease and will not be less than \$4 per acre or fraction thereof per year, payable in advance. Production royalty payments will be credited to payments in lieu of annual production for that year only.

#### **§ 3903.52 Production royalties.**

(a) The lessee must pay royalties on all products of oil shale that are sold from or transported off of the lease.

(b) The royalty rate for the products of oil shale is 5 percent of the amount or value of production for the first 5 years of commercial production. The royalty rate will increase by 1% each year starting the sixth year of commercial production to a maximum royalty rate of 12 1/2% in the thirteenth year of commercial production.

#### **§ 3903.53 Overriding royalties.**

The lessee must file documentation of all overriding royalties (payments out of production to an entity other than the United States) associated with the lease in the proper BLM office within 90 calendar days after execution of the assignment of the overriding royalties.

#### **§ 3903.54 Waiver, suspension, or reduction of rental or payments in lieu of production, or reduction of royalty, or waiver of royalty in the first 5 years of the lease.**

(a) In order to encourage the maximum economic recovery (MER) of the leased mineral(s), and in the interest of conservation, whenever the BLM determines it is necessary to promote development or finds that leases cannot be successfully operated under the lease terms, the BLM may waive, suspend, or reduce the rental or payment in lieu of production, reduce the rate of royalty, or in the first 5 years of the lease, waive the royalty.

(b) Applications for waivers, suspension or reduction of rentals or payment in lieu of production, reduction in royalty, or waiver of royalty for the first 5 years of the lease must contain the serial number of the lease, the name of the record title holder, the operator or sub-lessee, a description of the lands by legal subdivision, and the following information:

(1) The location of each oil shale mine or operation, and include:

(i) A map showing the extent of the mining or development operations;

(ii) A tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months immediately preceding the date of filing of the application; and

(iii) The average production per day mined for each month, and complete information as to why the minimum production was not attained;

(2) Each application must contain:

(i) A detailed statement of expenses and costs of operating the entire lease;

(ii) The income from the sale of any leased products;

(iii) All facts showing whether the mines can be successfully operated under the royalty or rental fixed in the lease; and

(iv) Where the application is for a reduction in royalty, information as to whether royalties or payments out of production are paid to anyone other than the United States, the amounts so paid, and efforts made to reduce those payments;

(3) Any overriding royalties cannot be greater in aggregate than one-half the royalties paid to the United States.

(c) Contact the proper BLM office for detailed information on submitting copies of these applications electronically.

### **§ 3903.60 Late payment or underpayment charges.**

Late payment or underpayment charges will be assessed under MMS regulations at 30 CFR 218.202.

## **Subpart 3904—Bonds and Trust Funds**

### **§ 3904.10 Bonding requirements.**

(a) Prior to issuing a lease or exploration license, the BLM requires exploration license or lease bonds for each lease or exploration license that covers all liabilities, other than reclamation, that may arise under the lease or license. The bond must be executed by the lessee and cover all record title owners, operating rights owners, operators, and any person who conducts operations or is responsible for payments under a lease or license.

(b) Before the BLM will approve a POD, the lessee must provide to the proper BLM office a reclamation bond to cover all costs the BLM estimates will be necessary to cover reclamation.

### **§ 3904.11 When to file bonds.**

File the lease bond before the BLM will issue the lease, file the reclamation bond before the BLM will approve the POD, and file the exploration bond before the BLM will issue the exploration license.

### **§ 3904.12 Where to file bonds.**

File one copy of the bond form with original signatures in the proper BLM state office. Bonds must be filed on an approved BLM form. The obligor of a personal bond must sign the form. Surety bonds must have the lessee's and the acceptable surety's signatures.

#### **§ 3904.13 Acceptable forms of bonds.**

(a) The BLM will accept either a personal bond or a surety bond. Personal bonds are pledges of any of the following:

(1) Cash;

(2) Cashier's check;

(3) Certified check; or

(4) Negotiable U.S. Treasury bonds equal in value to the bond amount. Treasury bonds must give the Secretary authority to sell the securities in the case of failure to comply with the conditions and obligations of the exploration license or lease.

(b) Surety bonds must be issued by qualified surety companies approved by the Department of the Treasury. A list of qualified sureties is available at any BLM state office.

#### **§ 3904.14 Individual lease, exploration license, and reclamation bonds.**

(a) The BLM will determine individual lease bond amounts on a case-by-case basis. The minimum lease bond amount is \$25,000.

(b) The BLM will determine reclamation bond and exploration license bond amounts on a case-by-case basis when it approves a POD or exploration plan. The reclamation or exploration license bond must be sufficient to cover the estimated cost of site reclamation.

(c) The BLM may enter into agreements with states to accept a state reclamation bond to cover the BLM's reclamation bonding requirements if it is adequate to cover both the Federal liabilities and all others for which it stands as security. The BLM may request additional information from the lessee or operator to determine whether the state bond will cover all of the BLM's reclamation requirements.

(1) If a state bond is to be used to satisfy the BLM bonding requirements, evidence verifying that the existing state bond will satisfy all the BLM reclamation bonding requirements must be filed in the proper BLM office.

(2) The BLM will require an additional bond if the BLM determines that the state bond is inadequate to cover all of the potential liabilities for your BLM leases.

#### **§ 3904.15 Amount of bond.**

(a) The BLM may increase or decrease the required bond amount if it determines that a change in amount is appropriate to cover the costs and obligations of complying with the requirements of the lease or license and these regulations. The BLM will not decrease the bond amount below the minimum ( see §3904.14(a)).

(b) The lessee or operator must submit to the BLM every three years after reclamation bond approval a revised estimate of the reclamation costs. The BLM will verify the revised estimate of the reclamation costs submitted by the lessee or operator. If the current bond does not cover the revised estimate of reclamation costs, the lessee or operator must increase the reclamation bond amount to meet or exceed the revised cost estimate.

#### **§ 3904.20 Default.**

(a) The BLM will demand payment from the lease bond to cover nonpayment of any rental or royalty owed or the reclamation or exploration license bond for any reclamation obligations that are not met. The BLM will reduce the bond amount by the amount of the payment made to cover the default.

(b) After any default, the BLM will provide notification of the amount required to restore the bond to the required level. A new bond or an increase in the existing bond to its pre-default level must be provided to the proper BLM office within 6 months of the BLM's written notification that the bond is below its required level. The BLM may accept separate or substitute bonds for each exploration license or lease. The BLM may take action to cancel the lease or exploration license covered by the bond if sufficient additional bond is not provided within the six month time period.

#### **§ 3904.21 Termination of the period of liability and release of bonds.**

(a) The BLM will not consent to termination of the period of liability under a bond unless an acceptable replacement bond has been filed.

(b) Terminating the period of liability of a bond ends the period during which obligations continue to accrue, but does not relieve the surety of the responsibility for obligations that accrued during the period of liability.

(c) A lease bond will be released when BLM determines that all lease obligations accruing during the period of liability have been fulfilled.

(d) A reclamation bond or license bond will be released when the BLM determines that the reclamation obligations arising within the period of liability have been met and that the reclamation has succeeded to the BLM's satisfaction.

(e) The BLM will release a bond when it accepts a replacement bond in which the surety expressly assumes liability for all obligations that accrued within the period of liability of the original bond.

#### **§ 3904.40 Long-term water treatment trust funds.**

(a) The BLM may require the operator or lessee to establish a trust fund or other funding mechanism to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining maintenance requirements. The funding must be adequate to provide for the construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. The BLM may identify the need for a trust fund or other funding mechanism during plan review or later.

(b) In determining whether a trust fund will be required, the BLM will consider the following factors:

(1) The anticipated post-mining obligations (PMO) that are identified in the environmental document or approved POD;

(2) Whether there is a reasonable degree of certainty that the treatment will be required based on accepted scientific evidence or models;

(3) The determination that the financial responsibility for those obligations rests with the operator; and

(4) Whether it is feasible, practical, or desirable to require separate or expanded reclamation bonds for those anticipated long-term PMOs.

#### **Subpart 3905—Lease Exchanges.**

##### **§ 3905.10 Oil shale lease exchanges.**



To facilitate the recovery of oil shale, the BLM may consider land exchanges where appropriate and feasible to consolidate land ownership and mineral interest into manageable areas. Exchanges are covered under part 2200 of this chapter.