

respirators which have been granted a NIOSH certificate of approval.

(c) Fees will not be charged for:

- (1) Technical assistance not related to processing an approval application;
- (2) Technical programs including development of new technology programs;
- (3) Participation in research; and
- (4) Regulatory review activities, including participation in the development of health and safety standards, regulations and legislation.

#### **§ 84.21 Fee calculation.**

(a) This section provides the direct and indirect costs of NIOSH's services.

(b) Upon completion of an initial administrative review of the application, NIOSH will calculate a fee estimate for each application, including the maximum cost of conducting additional tests under § 84.24 of this part, and will provide that estimate, with payment details, to the applicant. NIOSH will begin the technical evaluation once the applicant accepts the terms of the fee estimate and authorizes payment. The fee estimate will be derived using the current schedules of fees published by NIOSH in the **Federal Register** and on the NIOSH Web site at <http://www.cdc.gov/niosh/npptl/default.html>.

(c) If NIOSH determines that actual costs for application processing and related testing will exceed the fee estimate provided to the applicant, NIOSH will provide to the applicant a revised fee estimate for completing the application review. The applicant will have the option of either withdrawing the application and paying for NIOSH services already performed or authorizing payment of the revised estimate, in which case NIOSH will continue the application review and related testing.

(d) If the actual cost of processing the application is less than the fee estimate NIOSH provided to the applicant, NIOSH will charge the actual cost.

(e) If the applicant withdraws an application, the applicant shall pay for services already performed by NIOSH for the application review. Such services shall include any administrative work (including any administrative work to process the withdrawal), and any examinations, inspections, or tests performed pursuant to such application. Withdrawal of an application shall be effective on the first business day following the date NIOSH receives a withdrawal notice from the applicant in writing. Withdrawal notices shall be submitted to NIOSH only at the application address specified under § 84.10 of this part.

#### **§ 84.22 Fee administration.**

(a) Applicants will be billed for all application fees when processing of the application is completed or the application is withdrawn. Invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

(b) Applicants who hold active certificates of approval will be billed by NIOSH annually or as appropriate for any applicable maintenance fees. Such maintenance fees, where applicable, are specified in the current schedule of fees published by NIOSH in the **Federal Register** and on the NIOSH Web site at <http://www.cdc.gov/niosh/npptl/default.html>.

(c) NIOSH reserves the right to impose sanctions for any missed payment, and will administer such penalties after assessing the circumstances of the manufacturer and the needs of other stakeholders. Sanctions may include but are not limited to:

- (1) Refusal to accept future applications for approval;
- (2) Stop-sale of all approved product; and
- (3) Engaging appropriate government authorities to initiate debt collection procedures for the unpaid fees.

#### **§ 84.23 Fee revision.**

(a) Each fee schedule shall remain in effect for at least 1 year and shall be revised at least once every 5 years.

(b) Updated fee schedules shall be published in the **Federal Register** and posted on the NIOSH Web site at <http://www.cdc.gov/niosh/npptl/default.html>.

(c) The current fee schedules shall remain in effect until NIOSH publishes new fee schedules in the **Federal Register** as specified under paragraph (b) of this section.

#### **§ 84.24 Authorization for additional tests and fees.**

NIOSH shall conduct any examination, inspection, or test it deems necessary to determine the quality and effectiveness of any respirator submitted to NIOSH for the purposes of seeking a certificate of approval. The costs of such examinations, inspections, or tests shall be paid by the applicant prior to issuance of a certificate of approval for the subject respirator.

#### **Subpart G—General Construction and Performance Requirements**

- 7. In § 84.66, revise paragraph (b) to read as follows:

#### **§ 84.66 Withdrawal of applications.**

\* \* \* \* \*

(b) Upon the receipt of a written request from the applicant for the withdrawal of an application, NIOSH shall bill the applicant based on the fee calculated, as specified under § 84.21(e) of this part.

#### **Subpart N—Special Use Respirators**

#### **§ 84.258 [Removed]**

- 8. Remove § 84.258.

#### **Subpart KK—Dust, Fume, and Mist; Pesticide; Paint Spray; Powered Air-Purifying High Efficiency Respirators and Combination Gas Masks**

#### **§ 84.1102 [Removed]**

- 9. Remove § 84.1102.

Dated: March 20, 2013.

**Kathleen Sebelius**

*Secretary, Department of Health and Human Services.*

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## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

#### **43 CFR Parts 3900, 3920, and 3930**

[LLWO–3200000 L13100000.PP0000 L.X.EMOSHL000.241A]

RIN 1004–AE28

#### **Oil Shale Management—General**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing to amend the BLM's commercial oil shale regulations by revising these regulations in order to address concerns about the royalty system in the existing regulations and to provide more detail to the environmental protection requirements.

**DATES:** Send your comments to reach the BLM on or before May 28, 2013. The BLM will not necessarily consider any comments received after the above date in making its decision on the final rule.

**ADDRESSES:** Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE28. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. Federal eRulemaking Portal: <http://>

[www.regulations.gov](http://www.regulations.gov). Follow the instructions at this Web site.

**FOR FURTHER INFORMATION CONTACT:**

Mitchell Leverette, Chief, Division of Solid Minerals, at (202) 912-7113 for issues related to the BLM's commercial oil shale leasing program or Ian Senio, Chief, Division of Regulatory Affairs at (202) 912-7440 for regulatory process issues. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339, 24 hours a day, 7 days a week to contact the above individuals.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rule
- IV. Procedural Matters

**I. Public Comment Procedures**

If you wish to comment, you may submit your comments by any one of several methods: You may mail comments to Director (630), Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St. NW., Washington DC 20240, Attention: 1004-AE28. You may deliver comments to U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003; or you may access and comment on the proposed rule at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**). Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing. The BLM need not consider or include in the Administrative Record for the proposed rule comments that it receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Washington, DC 20003 during regular hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except holidays. They also will be available at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at this Web site.

Before including your address, telephone number, email address, or other personal identifying information

in your comment be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

*Advance Notice of Proposed Rulemaking*

The BLM published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) on August 25, 2006 (71 FR 50378). The ANPR requested public comments on key components to be considered in the development of a commercial oil shale leasing and development program. On September 26, 2006, the BLM published in the **Federal Register** a notice reopening and extending the comment period on the ANPR (71 FR 56085). The BLM received 48 comment letters on the ANPR and considered those comments in developing the proposed and final rules.

*Proposed 2008 Rule*

On July 23, 2008, the BLM published in the **Federal Register** a proposed rule entitled Oil Shale Management—General (73 FR 42926). The comment period for the proposed rule closed on September 22, 2008. The BLM received over 75,000 comment letters on the proposed rule from individuals, Federal and state governments and agencies, interest groups, and industry representatives. The BLM considered those comments in developing the final rule.

*Final 2008 Rule and This Proposal*

On November 18, 2008, the BLM published in the **Federal Register** the final oil shale regulations (73 FR 69414). The regulations were required by Section 369 of the Energy Policy Act of 2005 (42 U.S.C. 15927) (EPAAct). Section 369 addresses oil shale development and directs the Secretary of the Interior (Secretary) to establish regulations for a commercial leasing program. The Mineral Leasing Act of 1920 (30 U.S.C. 241(a)) (MLA) also authorizes the BLM to lease oil shale resources on BLM-managed public lands. Additional statutory authorities for the 2008 regulations and for the amendments proposed in this notice are:

- (1) Section 32 of the Mineral Leasing Act of 1920 (30 U.S.C. 189);
- (2) Section 10 of the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 359); and

(3) Section 310 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1740).

For additional information on the ANPR, the 2008 proposed rule, and the final rule, please see the above-referenced **Federal Register** notices.

After publication of the final rule in 2008, the regulations were challenged in Federal court. As part of the settlement agreement, the BLM agreed to propose certain revisions to the regulations, as presented below, relating to the royalty rate and other environmental protection requirements applicable to commercial oil shale leasing, in addition to clarifying certain other regulatory provisions. This proposed rule would revise the BLM's oil shale leasing regulations at 43 CFR parts 3900, 3920, and 3930.

*Programmatic Environmental Impact Statement*

On November 28, 2008, the BLM published in the **Federal Register** a Notice of Availability of the Approved Resource Management Plan Amendments/Record of Decision (ROD) for Oil Shale and Tar Sands Resources to Address Land use Allocations in Colorado, Utah, and Wyoming and the Final Programmatic Environmental Impact Statement (EIS) (73 FR 72519). The amendments and ROD expanded the acreage potentially available for commercial tar-sands leasing and amended 10 Resource Management Plans (RMP) in Utah, Colorado, and Wyoming to make approximately 1.9 million acres of public lands potentially available for commercial oil shale development and 431,224 acres potentially available for tar sands leasing and development. The oil shale resources are found in the Piceance and Washakie Basins in Colorado, the Uintah Basin in Utah, and the Green River and Washakie Basins in Wyoming. The tar sands resources are found in certain sedimentary provinces in the Colorado Plateau in Utah.

The Programmatic EIS summarized information on oil shale and tar sands technologies and their potential environmental and socio-economic impacts, along with potential mitigating measures that would be evaluated and applied when subsequent site-specific National Environmental Policy Act (NEPA) analysis is undertaken for lease issuance or project approval.

Concurrently with its review of the 2008 final oil shale regulations, the BLM has undertaken a new public planning process related to oil shale and tar sands. Specifically, on April 14, 2011, the BLM published in the **Federal Register** a Notice of Intent to Prepare a

Programmatic Environmental Impact Statement (EIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (76 FR 21003). On February 6, 2012, the BLM published in the **Federal Register** a Notice of Availability of the Draft Programmatic Environmental Impact Statement for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming (77 FR 5833). In addition to announcing the opening of the 90-day comment period, the notice provided background information on the Draft Programmatic EIS and stated that the BLM planned to hold public meetings to provide an overview of the Draft Programmatic EIS, respond to questions, and take written comments.

The BLM held Open House meetings during March 2012 to provide additional information on the Draft PEIS. During the comment period that closed on May 4, 2012, approximately 160,000 comment letters were received. Comments on the Draft PEIS received from the public and cooperating agencies, other federal agencies, as well as internal BLM review, were considered and incorporated, as appropriate, into the proposed plan amendments. The proposed plan amendments in the Final EIS would revise the current land use plans in the study area, which describe land allocations analyzed in the 2008 PEIS and approved in the subsequent Record of Decision.

The BLM published the notice of availability of the Final PEIS on November 9, 2012. This began both the 30-day protest period, which ended December 10, 2012, and the 60-day Governor's Consistency Review, which ended January 9, 2013.

The BLM received seventeen protest letters, including 1 from the State of Utah, 5 from county governments, 6 from industry-affiliated groups or companies, and 5 from environmental groups. Major protest issues raised by government and industry interests relate to: the rationale and need for revising decisions of the 2008 PEIS; the proposed reduction in the amount of lands available for leasing; the proposed requirement for Research, Development, and Demonstration (R, D and D) before issuance of commercial leases; the consideration of lands with wilderness characteristics; the consideration of sage-grouse habitat inventories and related State policies; and the consideration of new oil shale technologies in the PEIS analysis.

Major protest issues raised by environmental groups relate to the adequacy of the NEPA analysis, particularly impacts related to climate change, air quality, cultural resources, water resources, and cumulative impacts.

The BLM answered the protests on March 23, 2013 and responded to the Governor's Consistency Review letters on February 6, 2013. The Record of Decision (ROD) was signed on February 22, 2013.

#### *Oil Shale Research, Development, and Demonstration (R, D and D) Program*

##### *First Round*

The BLM's Oil Shale R, D and D program began on June 9, 2005, with a call for nominations published in the **Federal Register** (70 FR 33753). The BLM received 20 nominations and after intense review, six tracts of 160 acres each were determined to be suitable for R, D and D. These six tracts were evaluated under NEPA. On January 1, 2007, five R, D and D leases were issued in Colorado and on July 1, 2007, one lease was issued for BLM lands in Utah. These were the first R, D and D leases issued for public lands and the first Federal oil shale leases issued in 35 years. Most of the six leases are currently in various stages of testing and research for the potential production of oil shale resources.

##### *Second Round*

On November 3, 2009, the BLM published a Notice in the **Federal Register** (74 FR 56867) calling for nominations for a second round of oil shale R, D and D leasing. The BLM received three nominations—two in Colorado and one in Utah. The three nominations were reviewed by an Interdisciplinary Review team to determine the:

- (1) Potential for the proposal to advance the knowledge of effective technology;
- (2) Economic viability of the applicant; and
- (3) Means of managing the environmental effects of the proposed oil shale technology.

The Interdisciplinary Review Team found that all three nominations adequately addressed the evaluation criteria, and, on October 19, 2010, the proponents were notified that their nominations would be forwarded for NEPA review. The two Colorado tracts were evaluated under NEPA and leases were issued effective December 1, 2012. The Utah nomination was canceled and the case closed on December 7, 2012, because the proponent failed to initiate the NEPA process.

### **III. Discussion of the Proposed Rule**

This proposed rule provides the BLM with an opportunity to reconsider certain portions of the 2008 regulations, which were challenged in Federal court. As part of the settlement agreement, the BLM agreed to propose specific revisions to the 2008 regulations, as presented below, to address the royalty rate and certain environmental protection requirements applicable to commercial oil shale leasing.

In this rulemaking proceeding, the BLM will consider several options for amending the current royalty rates for commercial oil shale production. The BLM will particularly consider whether a single royalty rate or rate structure should be set in advance in regulation to provide greater certainty to potential lessees or whether some administrative flexibility may be retained to make adjustments to royalty terms after more is known about the costs and resource impacts associated with emerging oil shale technologies, whether future applications to lease should include specified resource-protection plans, and whether other aspects of the regulations should be clarified.

The proposed revisions are intended to clarify specific provisions, to ensure that the royalty rate provides a fair return to the American taxpayer while encouraging the development of Federal oil shale resources, and that adequate measures are in place to protect the environment.

#### *Section 3903.52 Production royalties*

The Energy Policy Act of 2005 (Section 369(o)) directs the agency to establish royalties and other payments for oil shale leases that "shall

- (1) Encourage development of the oil shale and tar sands resources; and
- (2) Ensure a fair return to the United States."

The BLM extensively discussed the issue of the royalty rates for commercial oil shale production in the preamble to the 2008 oil shale rules. See 73 FR at 69419–69429. Those rules, which are currently in effect, set the royalty rate at 5 percent for the first 5 years of commercial production and increases it by 1 percent each year starting with the sixth year of commercial production, reaching a maximum royalty rate of 12 ½ percent in the thirteenth year of commercial production.

Notwithstanding the 2008 analysis, there are some concerns that cause the BLM to revisit the issue. On the one hand, the Federal lands open for oil shale leasing in Colorado, Utah, and Wyoming have, in many locations, vast quantities of oil shale per surface acre.

If the royalty rates were set too low and the industry were to develop a highly efficient technology, then there could be immense private profits from Federal oil shale leases without a fair return to the American people.

On the other hand, as has been previously explained, oil shale is a class of rocks such as marlstone containing not oil, but kerogen. See 73 FR 69414. Oil shale is not like any of the shales or “tight” formations found in many parts of the United States that contain oil or gas that can be produced by hydraulic fracturing. All known technologies to convert the kerogen to liquid hydrocarbons require significant amounts of energy. Thus, there is a reasonable likelihood that developers will continue to view commercial oil shale production as a more expensive prospect than competing conventional oil and gas projects. If the royalty rates are set too high, they could discourage development of the oil shale resources.

None of the R, D and D leases issued in 2006 and 2007 have yet demonstrated a commercially viable technology. The recently issued R, D and D leases are probably years away from demonstrating technologies. Although there are entities conducting various types of activities on other oil shale lands in the United States, the BLM does not have data showing that oil shale development is commercially viable at this time. Thus, even though the existing royalty rates might be appropriate for the oil shale industry when it comes into being, at present the BLM is faced with uncertainty.

Pursuant to the settlement agreement, the BLM is proposing to remove the royalty rates currently in section 3903.52(b). Additionally, the BLM is proposing that the royalty rate will be set by the BLM in the notice of sale or, for R, D and D conversion, it will be established by the Secretary of the Interior. The BLM has not yet made a decision on what would replace the current rule’s royalty rates, but rather is seeking comment on several different options as set forth below.

#### Option 1. Invite Comment on Proposed Lease Terms in a Proposed Notice of Lease Sale

Under this option, the BLM would first publish a proposed notice of sale or conversion to a commercial lease for a period of not less than 30 days. That proposed notice would include all proposed lease terms and stipulations, including proposed royalty and rental rates. It also would include an explanation of how the BLM determined the proposed royalty rate. This would give interested parties and the public an

opportunity to comment on all the proposed terms, including the proposed royalty rate. Under this option and so as to allow adequate time for both comment and consideration of the comments, the BLM would amend Section 3924.5 to require at least 60 days between publication of the proposed notice of sale and the notice of sale.

#### Option 2. Invite Public Comment Using Coal Lease Sale Process

As an alternative to publishing a proposed notice of sale, the BLM specifically seeks comments on a possible alternative procedure that would be modeled after a provision in the Federal coal leasing regulations at 43 CFR 3422.1. Instead of publishing a proposed notice of sale, the BLM would, at least 30 days before the notice of sale, solicit public comment on the fair market value of, and expected recovery from, the oil shale lands proposed to be offered for lease and on what royalty rate and other lease terms or stipulations commenters believe should be required. The authorized officer would prepare a report evaluating the comments and containing his or her recommendations for the minimum bid and for the royalty rate and other lease terms to be included in the leases offered.

#### Option 3. Sliding Scale Royalty Based on the Market Prices of Oil and Gas

In the 2008 proposed oil shale rule, the BLM considered and sought comment on a sliding scale royalty. That approach was not adopted in the final 2008 rule, but in light of the need to reconsider the existing royalty rates under the terms of the settlement, we would like to reconsider this option and are seeking public comment on the best approach to implementing a sliding scale royalty structure.

Although the BLM has expressed concerns in the past about the complexity of administering certain sliding scale royalty proposals, we recognize that a sliding scale royalty could prove useful in meeting the dual goals of encouraging production and ensuring a fair return to taxpayers from future oil shale development.

One of the concerns that has been expressed regarding oil shale development is that potential oil shale developers may be reluctant to make the large upfront investments required for commercial operations if they believe there is a chance that crude oil prices might drop in the future below the point at which oil shale production would be profitable (i.e., competitive with conventional oil production). A sliding

scale royalty system could allow the government to at least partially mitigate this development risk by providing for a lower royalty rate if crude oil prices fall below a certain price threshold.

The basic concept is that in return for the government accepting a greater share of the price risk that an operator faces when prices are low (in the form of a lower royalty), the government would receive a greater share of the rewards (through a higher royalty) when prices are high.

The BLM has not decided on the specific parameters of a sliding scale royalty system, but is considering a simplified two- or three-tiered system based on the current royalty rates already in effect for conventional fuel minerals. The applicable royalty rate would be determined based on market prices of competing products (e.g., crude oil and natural gas) over a certain time period. In a two-tiered system, if prices remain below a certain point during the applicable period, the royalty rate on oil shale products would be the lower of two options. If prices are above that range for the period, a higher royalty would be charged. In a three-tiered system, a third royalty rate would apply if prices rise above a second price threshold during the applicable period.

The BLM seeks comment on the specific parameters that could be applied to a sliding scale royalty system, should the BLM choose to adopt such a system in the final rule. More specifically, the BLM would like feedback on the following questions:

1. Should a sliding scale system include two or three tiers? What would be appropriate royalty rates under a two-tiered system recognizing the dual goals of encouraging production and achieving a fair return to the government? What rates would be appropriate for a three-tier system?

2. What are appropriate price thresholds to apply to each tier? Should the thresholds be fixed (in real dollar terms), or should they float relative to a published index?

3. Should the sliding scale apply to all products, or should nonfuel products pay a traditional flat rate?

4. Are there other ways to simplify a sliding scale royalty system so as to reduce the administrative costs for the BLM, the Office of Natural Resources Revenue, and producers while still providing a reasonable assurance that the public is receiving its fair share of revenue from production?

#### Option 4. Establish a Minimum Royalty of 12.5% in Regulation, With Secretarial Flexibility To Establish a Higher Rate Later

Under this option, a minimum royalty of 12.5% would be established to address concerns about the existing rate and implement the terms of the settlement agreement. The minimum royalty rate at 12.5%, the same rate as currently applied in the BLM's oil and gas program, is being considered as it is contemplated that the primary products produced from oil shale will compete directly with those from onshore oil and gas production. However, the Secretary would have the authority to establish a higher rate, if determined to be appropriate, without completing a new rulemaking. This option would provide flexibility for the Secretary to adapt and respond accordingly to new information, such as emerging oil shale technologies and future oil shale production cost information, and changes to the price of this commodity, in order to help assure a fair return to the United States. Establishing a minimum royalty would be consistent with how other conventional fuels (e.g., oil, gas, and coal) are treated under existing statutes and regulations.

In order to promote transparency in connection with the proposed change to allow a higher royalty rate to be established at a later time, the BLM would add a requirement to first publish a proposed notice of sale. That proposed notice would include all proposed lease terms and stipulations, including proposed royalty and rental rates. It also would include an explanation of how the BLM determined the proposed royalty rate.

The notice would invite comment on the proposed lease terms for a period of not less than 30 days. This would give interested parties and the public an opportunity to comment on all the proposed terms, including the proposed royalty rate. So as to allow adequate time for both comment and consideration of the comments, the BLM would require at least 60 days between publication of the proposed notice of sale and the notice of sale.

The BLM also invites comments on variations of the aforementioned options, including setting a minimum royalty rate as part of options 1 and 2 or not setting a minimum royalty rate, as well as any other royalty systems rates that would meet the dual requirements of the EPAct to encourage production and ensure a fair return to the public. Comments with technical economic data and analysis would be most useful. The final rule will include

a royalty provision that will be informed by public comments the BLM receives as a result of this proposed rule.

#### Section 3925.10 Award of Lease

Section 3925.10(a) currently provides that a lease will be awarded to the qualified bidder submitting the highest bid that meets or exceeds the BLM's estimate of fair market value (FMV). The section would be revised by substituting the word "may" for the word "will" in the first sentence to clarify that issuing a lease is a discretionary action on the part of the BLM, rather than mandatory. In the case of a competitive lease sale, the BLM may award a lease to the highest qualified bidder, but has no obligation to do so (see 30 U.S.C. 241(a)(1)).

Paragraph (a) would also be revised to add that the BLM would not issue a commercial lease unless it determines that oil shale operations could occur without unacceptable environmental risk (UER). This proposal is one of those required by the settlement agreement. Conditioning the issuance of a commercial oil shale lease on the BLM's determination that operations could occur without UER would add a new standard for lease issuance. The paragraph would also be revised to add the requirement that commercial oil shale leases would be issued only under the procedures in 43 CFR part 3900.

In addition, the BLM proposes to employ the UER standard in the context of approval of a Plan of Development (POD), as described in section 3931.10(e), as well as in the context of conversion of an R, D and D lease to commercial operations, as described in section 3926.10(c)(6).

The MLA grants the Secretary, as the Federal land manager, wide latitude in decision making with regard to all leasable minerals. Under the MLA, the decision to withhold issuance of a minerals lease is discretionary, and need not be based upon any particular standard contained in the regulations. Under FLPMA section 302(b), the general environmental standard for managing the public lands is the prevention of unnecessary or undue degradation (UUD). The UER standard proposed in this rule would be one basis for exercising the Secretary's statutory discretion under the MLA and would be in addition to the UUD standard. It would not, however, be the only possible basis for withholding lease issuance, because the Secretary continues to retain his statutory discretion in awarding new leases.

The proposed UER standard should not be confused with assessment or regulation of environmental risk by any

other agency, acting under any other statutory or regulatory authority. For instance, the public might be most familiar with the risk assessments that provide the framework for human health and ecosystem health evaluations developed by the Environmental Protection Agency (EPA) under laws that govern hazardous or toxic substances. Such risk assessments characterize the probability of adverse effects from exposure to environmental stressors and differ from the proposed UER standard in that they are quantitative characterizations derived from scientific processes that use statistical and biological models to calculate numerical estimates of ecological and health risks. See Office of Emergency and Remedial Response, U.S. EPA, *Risk Assessment Guidance for Superfund Volume I Human Health Evaluation Manual (Part A) Interim Final* (EPA/540/1-89/002) (1989). Available at <http://www.epa.gov/oswer/riskassessment/ragsa/index.htm>. These types of risk assessments are required under environmental statutes such as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, and the Comprehensive Environmental Response Compensation and Liability Act/Superfund Amendments and Reauthorization Act (CERCLA/SARA), 42 U.S.C. 9601 *et seq.*, where they are used to characterize the current and potential threats to human health and the environment from potentially hazardous or toxic substances. See e.g., CERCLA/SARA Sections 104, 105(a)(2), 121(b)-(d); 40 CFR 300; EPA, *RCRA Risk Assessment*. [http://www.epa.gov/oswer/riskassessment/risk\\_rcra.htm](http://www.epa.gov/oswer/riskassessment/risk_rcra.htm). Agencies such as the Agency for Toxic Substances and Disease Registry, within the Department of Health and Human Services, as well as the Occupational Safety and Health Administration employ a similar approach with respect to the potentially hazardous or toxic substances whose use and/or regulation is within their purview.

The BLM's implementation of the UER standard in the management of oil shale resources, if adopted, is likely to evolve with its application, but in no event does the BLM intend to impose upon itself the requirement to perform a quantitative risk assessment, as a threshold to exercising its discretion. A quantitative risk analysis under the proposed UER standard could be difficult in the context of decisions on leasing and development where pertinent data and information about potentially catastrophic events and/or the risk of occurrence would not likely

be reasonably available. Because of the nascent character of the oil shale industry and the diverse nature of possible environmental concerns associated with particular oil shale mining operations, risk assessments the BLM would prepare are likely to be qualitative, and involve uncertainty to a greater degree than those developed by EPA with respect to specific hazardous or toxic substances. To assist it in making its determination, the BLM intends that the proponent of a commercial lease demonstrate that future operations would likely occur without UER and that appropriate mitigation would be available to assure that the possible environmental risks remain low.

As an alternative to the proposed UER standard, the BLM also specifically requests comments on whether “unacceptable environmental consequences” (UEC) might be a more appropriate standard for issuance of commercial leases in proposed section 3925.10(a), for conversion of R, D and D leases in section 3926.10, and for approval of plans of development in section 3931.10. The standard for conversion in the eight existing R, D and D leases is that commercial operations can occur without UEC. That language originates with a Federal Court of Appeals decision concerning NEPA. See *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983). However, while the BLM considers the environmental consequences of its proposed actions, UEC has not been defined or employed as a standard for decision-making by the BLM. It should be noted here that the UEC standard in R, D and D leases would not be interpreted to require the BLM, before it could deny a lease conversion or disapprove a Plan of Development (POD), or condition its approval, to prove that unacceptable consequences would “with certainty” occur. Rather than imposing a burden upon the BLM to establish a proposition, the alternative proposal would require the applicant for a lease conversion or POD approval to demonstrate that the proposed operations associated with the lease or plan would not likely result in UEC.

To assist in our decision making, the BLM also invites comment on whether, if UEC were to be adopted as the regulatory standard in lieu of UER, “environmental consequences” should be construed consistently with the regulations implementing NEPA and be limited to impacts which are reasonably foreseeable. In addition, we invite comment on whether, if UEC were to be the regulatory standard, “environmental consequences” should be construed

consistently with the regulations implementing NEPA to include reasonably foreseeable impacts that “have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.” (See 40 CFR 1502.22(b)).

The BLM’s review under either UER or UEC could encompass a broad range of considerations appropriate for each particular proposal, which might include such issues as impacts to water resources, wildlife, post-abandonment land uses, air quality, or greenhouse gas emissions including relevant energy balance considerations. Note also that UER, UEC, or any other threshold used in the regulations would not be less protective of the public lands than the “unnecessary or undue degradation” standard in Section 302(b) of FLPMA, 43 U.S.C. 1732(b).

In fact, in light of the existence of the FLPMA statutory standard, the BLM may determine that no additional substantive standard is necessary, either for determining whether or not to issue an R, D and D lease, or determining whether or not to approve a POD, or conversion from an R, D and D lease to a commercial lease.

#### *3926.10 Conversion of an R, D and D Lease to a Commercial Lease*

Section 3926.10 provides application procedures and requirements to convert R, D and D leases, including preference rights areas, into commercial leases. Paragraph (a) of this section would be expanded to clarify that the BLM may, in its discretion, deny an application to convert an R, D and D lease to a commercial lease based on environmental or other resource considerations. Similarly, paragraph (c) of this section would be expanded by adding a sentence to clarify that the BLM may, in its discretion, deny an application to convert an R, D and D lease based on environmental or other resource considerations. This reference to “other resource considerations” reflects the wide latitude afforded the Secretary’s discretion under the MLA and FLPMA, as discussed above. Those considerations are likely to depend, in large part, on the specifics pertaining to each project. Some examples of “other resource considerations” might include, but are not limited to requirements to: (1) Protect and conserve other mineral resources which may occur in the same lands, such as nahcolite and dawsonite in the “Multi-mineral zone” in the White River Field Office area, Colorado; (2) Honor pre-existing rights, such as

oil-and-gas leases, mining claims, etc.; (3) Achieve the ultimate maximum recovery of the mineral resources; (4) Prove that commercial quantities of shale oil will be produced from the lease; (5) Consult with State, local, or tribal officials to develop a plan for mitigating the socioeconomic impacts of commercial development.

Considering the various examples of what constitutes “other resource considerations,” it may be helpful to further define the term. One alternative is to state, “other resource considerations pursuant to the terms of that R, D and D lease.” The BLM seeks comment on this phrase or any other language that the public believes adds clarity to the term.

The last sentence of paragraph (c) would also be revised by adding the words “in its discretion” and substituting the word “may” for the word “will.” These changes to paragraph (c) are intended to clarify that approval of conversion of an R, D and D lease to a commercial lease is a discretionary action on the part of the BLM and is, therefore, not mandatory. Nothing in EPAct’s provisions concerning R, D and D leases requires that such leases be converted to commercial leases (see 42 U.S.C. 15927(c)). New paragraphs (c)(6) would require that commercial scale operations be conducted without UER.

#### *Section 3931.10 Exploration Plans and Plans of Development for Mining and In Situ Operations*

Section 3931.10 provides requirements for submission of exploration plans and PODs. This rule would revise paragraph (e) by adding a sentence stating that the BLM will not approve a POD unless it determines that operations under the POD can occur without UER.

Additionally, we propose adding a new paragraph (g) to make it clear that the BLM may deny a POD based on environmental or other resource considerations or the BLM may require a modification of or condition a POD to protect the environment or other resources. As noted above, with respect to considerations pertaining to conversion of R, D and D leases, this reference to “other resource considerations” as well as, here, “other resources,” reflects the wide latitude afforded the Secretary’s discretion under the MLA and FLPMA, as discussed above. The reference is broad to reflect that these considerations are likely to depend, in large part, on the specifics pertaining to each project.

### Section 3931.11 Content of Plan of Development

Section 3931.11 lists the required contents of a POD. This section would be revised to include additional information that the BLM would require in a POD. For instance, in the surface management regulations at 43 CFR part 3809 there is a similar list of specific information required; however in most program areas, the BLM requests detailed information from private proponents on a project specific basis in order to inform environmental analysis. The new requirements would include submission of a watershed and groundwater-protection plan under new paragraph (h); an airshed review under new paragraph (i); an integrated waste-management plan under new paragraph (j); and an environmental-protection plan under new paragraph (k). The new proposed requirements are intended to ensure that adequate measures are in place to protect the environment.

A watershed and groundwater-protection plan under paragraph (h) would require details on how operations would be conducted in a manner that protects surface and groundwater resources from adverse effects on the quality, quantity, timing, and distribution of water resulting from operations, and how monitoring, adaptive management, and mitigation of adverse impacts would be conducted, both during and after operations.

An airshed review under paragraph (i) is a review of the scientific data and analyses currently available at a reasonable cost relevant to the potential effects of commercial oil shale operations on the air quality of the pertinent airshed. The review would require providing the BLM with useful information to assess the effects of operations on the airshed.

An integrated waste-management plan under paragraph (j) would require information on conducting operations in a manner that would minimize the production of mine waste, and would provide for monitoring, adaptively managing, and mitigating the impacts of waste both during and after operations.

An environmental protection plan under paragraph (k) would be a plan to conduct operations in a manner that would minimize the adverse effects of oil shale operations on the quality of the air and water; wildlife and native plants; and productivity of soils and to also monitor, adaptively manage, and mitigate such adverse effects both during and after operations.

These plans and reviews are intended to facilitate both better decisions by the BLM in reviewing proposed PODs, and

better environmental performance of operations under an approved POD. These plans and reviews are likely to be necessary to properly analyze a POD under NEPA, and thus would be required pursuant to 43 CFR 3931.11(k) in most if not all cases, even in the absence of the proposed amendments to section 3931.11.

### IV. Procedural Matters

#### *Executive Order 12866, Regulatory Planning and Review*

Executive Order 12866 requires agencies to assess the benefits and costs of regulatory actions, and for significant regulatory actions, submit a detailed report of their assessment to the Office of Management and Budget (OMB) for review. A rule may be significant under Executive Order 12866 if it meets any of four criteria. A significant regulatory action is any rule that may:

- Have an annual effect on the economy of \$100 million or more or 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The proposed regulation would modify the commercial oil shale leasing and management regulations that were promulgated in 2008. The main proposal provisions include changes in the royalty applied to production, changes in the information required prior to authorization, and changes in the standards applied to an authorization.

Royalty payments are recurring income to the government and costs to the operator/lessee. As such, they are transfer payments that do not affect total resources available to society. Changes in the royalty rate have the potential to significantly alter the future distributional effects; however, they would not represent a cost or benefit to the economy. OMB defines "transfer payment" to include payments to the government in addition to the unearned payments from the government (*Economic Analysis of Federal Regulations Under Executive Order 12866, January 11, 1996, [http://](http://www.whitehouse.gov/omb/inforeg/riaguide)*

[www.whitehouse.gov/omb/inforeg/riaguide](http://www.whitehouse.gov/omb/inforeg/riaguide)). In addition, the definition OMB uses encompasses the revenue collected through a fee, surcharge, or tax (in excess of the cost of any service provided) as a transfer payment. Since a royalty is not a payment for service, this OMB transfer payment definition holds that a royalty is a transfer payment and is not to be included in the annual effect to the economy calculation. Thus, even though oil shale royalties may someday amount to billions of dollars of annual revenue, that revenue is excluded from the annual effect to the economy calculation because royalties are transfer payments for purposes of this analysis and as defined in OMB guidance.

Royalty income is dependent on how much oil shale may be produced and the market price of the commodity. Currently, no oil shale product is being commercially produced. However, under the existing royalty provision, and using the production projections, production schedule, U.S. Energy Information Administration (EIA) reference oil price, and other assumptions discussed in the agency's economic analysis, for the period of analysis, total royalty payments could have a net present value of \$4.4 billion. This analysis depends on production estimates generated by the Task Force on Strategic Unconventional Fuels, called for in the Energy Policy Act of 2005. To the extent that conditions differ from those assumed by the Task Force, actual royalty estimates could be significantly different. Given the range of uncertainties involved in whether or to what extent oil shale development may take place in the future, the BLM has not attempted to project the potential change in these transfer payments due to this rule. The amount of these transfer payments would also be impacted by which, if any, of the royalty options presented in the rule is ultimately selected for inclusion in the final rule. Thus, the BLM cannot at present state what the applicable rate will be to establish the distributional effects.

In addition to the proposed royalty provision, there are a number of provisions addressing information and standards associated with lease issuance and approval of the POD. These changes primarily codify in regulation current BLM practices, procedures, and policies. Assuming compliance with existing practices, procedures, and policies, there should not be any increased costs associated with complying with these proposed changes. As proposed, the BLM will not approve a POD unless it determines that



operations under the plan can occur without UER. Also under consideration is an alternative standard of UEC. How either standard would be implemented may increase costs to both the BLM and the proponent; however, there is no practical way to make defensible estimates concerning the increased costs.

Based on the available information, we estimate the annual effect on the economy of the regulatory changes will be less than \$100 million 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. This rule would not change the relationships of the oil shale programs with other agencies' actions. This rule does not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients. In addition, the proposed rules do not raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

#### *Clarity of Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites 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. 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.

#### *Small Business Regulatory Enforcement Fairness Act*

For a major rule, as defined by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the BLM must prepare an initial regulatory flexibility

analysis. For SBREFA, a rule may be major if it meets any of three criteria:

- Have an annual effect on the economy of \$100 million or more;
- Create a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

If determined to be a major rule SBREFA requires an agency to prepare an analysis when issuing a proposed rule that will have a significant impact on a substantial number of small entities.

The proposed regulation would modify the commercial oil shale leasing and management regulations that were promulgated in 2008. The main proposal provisions include changes in the royalty applied to production, changes in the information required prior to authorization, and changes in the standards applied to an authorization.

In addition to the proposed royalty provision, there are several provisions addressing information and standards associated with lease issuance and approval of the POD. These changes primarily codify in regulation what are current BLM practices, procedures, and policies. Assuming compliance with existing practices, procedures, and policies, there should not be any increased cost associated with complying with these proposed changes. As proposed, the BLM will not approve a POD unless it determines that operations under the plan can occur without UER. Also under consideration is an UEC standard. How either standard would be implemented may increase costs to both the BLM and the proponent; however, there is no practical way to make defensible estimates concerning the increased costs.

Based on the available information, the BLM estimates the annual effect on the economy of the regulatory changes will be less than \$100 million. This rule will not create a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. In addition, this proposed regulation will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic and export markets.

#### *National Environmental Policy Act (NEPA)*

The proposed regulatory amendments are categorically excluded from the requirement to prepare an environmental assessment (EA) pursuant to the regulations at 43 CFR 46.205 and 46.210. Nonetheless, the BLM has prepared an EA (DOI-BLM-WO-3900-2012-0001-EA) to inform the decision-maker and the public. The EA concludes that this proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires agencies to analyze the economic impact of proposed and final regulations to determine the extent to which there is a significant economic impact on a substantial number of small entities. Executive Order 13272 reinforces executive intent that agencies give serious attention to impacts on small entities and develop regulatory alternatives to reduce the regulatory burden on small entities. When the proposed regulation will impose a significant economic impact on a substantial number of small entities, the agency must evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities. Inherent in the RFA is a desire to remove barriers to competition and encourage agencies to consider ways of tailoring regulations to the size of the regulated entities.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act; those size standards can be found in 13 CFR 121.201. The SBA defines small entities involved in the oil and gas industry, which includes oil shale, as individuals, limited partnerships, or small companies considered at "arm's length" from the control of any parent companies, with fewer than 500 employees. For firms involved in oil and gas field exploration services and other field services SBA defines a small entity as having annual receipts of less than \$5 million.

There are currently no active commercial oil shale operations on Federal lands. Six firms hold R, D and D leases. Of those six companies, three are major oil companies, one is a multi-national oil shale company, one is a small mining company, and one is a



small research and development firm. In addition to the current make up of those firms operating on Federal lands, past efforts primarily involved the Federal government or large corporations. Smaller firms were involved, but their involvement was primarily to support larger organizations.

Entities that would be directly affected by this commercial oil shale leasing rule would include most, if not all, firms involved in the exploration and development of oil shale resources on Federal lands. Such firms are a subset of entities involved in the domestic oil shale industry.

The U.S. Census data on firms involved in oil shale research, exploration, and development by number of employees is not available; or at least not available in a form that allows the BLM to separate those firms from the much larger oil and gas industry. Information on firms involved in the oil shale industry is included in the broader categories of Crude Petroleum and Natural Gas Extraction, Support Activities for Oil and Gas Operations, and Petroleum Refineries. Within the Crude Petroleum and Natural Gas Extraction category, over 98 percent of the firms have fewer than 500 employees (U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, Number of Firms, Number of Establishments, Employment, and Annual Payroll by Employment Size of the Enterprise for the United States). Seventy-five percent of all firms in the Petroleum Refineries category had fewer than 500 employees. Ninety-two percent of the firms involved in providing oil and gas field service support had average annual receipts of less than \$5 million. This data indicates that the preponderance of firms in the domestic oil and gas industry are small entities as defined by the SBA.

With technological advances and favorable market conditions that will support oil shale development, the BLM anticipates an increase in the number of firms involved in oil shale development. However, the number of firms, large or small, involved in oil shale development on Federal lands will likely remain quite limited. Estimates for the size of the industry in the next 30 years range from 3 to 17 operations involved in the extracting and retorting of shale oil. To put these numbers in perspective, in 2009 there were approximately 6,500 establishments directly involved in the extraction of crude oil and natural gas in the United States. This count does not include establishments primarily engaged in performing drilling and support

activities for oil and gas operations, which adds an additional 10,000 more establishments to that count.

The BLM expects that future oil shale development will involve both large and small firms. If past development efforts are an accurate indicator of the future, most leasing and development will be led by a large, well-capitalized organization, supported by smaller entities. Given the likely size of the industry that may eventually be involved in the leasing and development of Federal oil shale resources, it is our conclusion that this rule would not impact a substantial number of small entities.

Oil shale development is characterized by high capital investment and long periods of time between expenditure of capital and the realization of production revenues and return on investment. Revenues are uncertain because future market prices for oil shale production and by-products are unknown. Therefore, a key economic barrier to private development is the inability to predict when profitable operations will begin. The economic risk associated with this uncertain outcome is magnified by the unusually large capital exposure, measured in billions of dollars per project, required for development.

There are significant barriers to oil shale development, including technological unknowns and potentially significant environmental impacts. But the proposed regulatory changes, including proposed changes to production royalties, are not likely to impede development or have a significant economic impact on lessees or operators, regardless of the firm's size.

The BLM therefore does not anticipate the proposed rule to have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) the proposed rule would 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 would this rule have a significant or unique effect on state, local, or tribal governments. The rule imposes no requirements on any of those entities. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

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

This rule is not a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The rule would not authorize any specific activities that would result in any effects on private property. Therefore, the Department 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 will 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 oil shale leases is the responsibility of the Secretary of the Interior and the BLM. This rule does not alter any lease management or regulatory role of the states or the rules governing revenue sharing with the states. In addition, this rule does not impose any costs on the states. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

#### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the BLM has determined that this proposed rule would not unduly burden the judicial system and that it would meet 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, the BLM has found that this rule may include policies that have tribal implications. The rule implements the Federal oil shale leasing and management program, which does not apply on tribal or allotted Indian lands. At present, there are no oil shale leases or agreements on tribal or allotted Indian lands. If tribes or allottees should ever enter into any leases or agreements with the approval of the Bureau of Indian Affairs, the BLM would then likely be responsible for the approval of any proposed operations on Indian oil

shale leases and agreements. In light of this possibility, and because tribal interests could be implicated in oil shale leasing on Federal lands, the BLM has begun consultation on this proposed rule with potentially affected tribes and will continue consulting during the comment period.

#### *Information Quality Act*

In developing this rule the BLM did not conduct or use experiments or surveys requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

In accordance with Executive Order 13211, the BLM has determined that the proposed rule would not be likely to have a substantial direct effect on the supply, distribution, or use of energy. Executive Order 13211 requires an agency to prepare a Statement of Energy Effects for a rule that is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy.

As discussed earlier in this preamble, under the proposal on future leases, the Secretary is considering several options for replacing the royalty rate structure established by the 2008 final rule. Additional information about oil shale production may be available in the future that would inform the Secretary's decision on royalty rates. The royalty rate and other proposed changes are not anticipated to have a significant negative effect on the economic viability of industry or on the nation's supply, distribution, or use of energy. The BLM believes the proposed rules would not have an adverse effect on the supply, distribution, or use of energy, and therefore has determined that the preparation of a Statement of Energy is not required.

#### *Executive Order 13352, Facilitation of Cooperative Conservation*

In accordance with Executive Order 13352, the BLM has determined that this rule would not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in the land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health

and safety. The proposed revisions to the oil shale regulations are in accordance with the terms of settlement agreement to a lawsuit relating to the 2008 final rule. Several of the proposed revisions are procedural in nature and provide clarification of existing provisions. The proposed rule also includes new environmental protection requirements for plans of development. The proposed rule will not affect opportunities under existing regulatory provisions for governors, state, local, and tribal governments to provide comments prior to the BLM offering the tracts for competitive oil shale leasing.

#### *Paperwork Reduction Act*

The proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520). The PRA provides that an agency may not conduct or sponsor, and no response is required for, a “collection of information” unless it displays a currently valid control number. Collections of information include any request or requirement that an individual, partnership, or corporation obtain information, and report it to a Federal agency (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). OMB has approved existing information collection requirements associated with the 2008 Oil Shale Final Rule, and has assigned control number 1004–0201 to those requirements.

In accordance with the PRA, the BLM is inviting public comment on proposed new information collection activity for which the BLM is requesting that OMB revise control number 1004–0201, Oil Shale Management (43 CFR parts 3900, 3910, 3920, and 3930) (expiration date January 31, 2015; 1,795 burden hours; and \$526,597 non-hour cost burdens). The collection of information under the existing and proposed regulations is required to obtain or retain a benefit in connection with oil shale operations. The BLM is requesting an expiration date of January 31, 2015, which is the same expiration date as the existing control number.

The information collection request for this proposed rule has been submitted to OMB for review under 44 U.S.C. 3504(h) of the PRA. A copy of the request can be obtained from the BLM by telephone request to Mary Linda Ponticelli at (202) 912–7115.

The BLM requests comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you wish to comment on the information collection aspects of this proposed rule, please send your comments directly to OMB via fax or electronic mail:

**Fax:** Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax (202) 395–5806).

**Electronic mail:** [oir\\_docket@omb.eop.gov](mailto:oir_docket@omb.eop.gov). Please indicate “Attention: OMB Control Number 1004–0201,” regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, please provide the BLM with a copy of your comments by mail, fax, or electronic mail:

**Mail:** U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW. Room 2134LM, Attention: Jean Sonneman, Washington, DC. 20240.

**Fax to:** Jean Sonneman at (202) 245–0050.

**Electronic mail:** [Jean\\_Sonneman@blm.gov](mailto:Jean_Sonneman@blm.gov).

OMB is required to make a decision concerning the collection of information contained in this proposed rule 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 by April 26, 2013.

The new collections of information in the proposed rule would be included in revisions to 43 CFR 3931.11, which lists the required contents of a plan of development. At present, control number 1004–0201 authorizes 308 burden hours and no non-hour costs for each plan of development.

The proposed rule would revise section 3931.11 to require the following additional information in a plan of development:

Proposed section 3931.11(h) would add a requirement for a watershed and groundwater protection plan:

(1) To conduct operations in a manner that protects surface and groundwater resources from adverse effects on the quality, quantity, timing and distribution of water resulting from operations, and

(2) To provide for monitoring, adaptive management, and mitigation of adverse impacts, both during and after operations. This plan would assist the BLM in assessing and managing potential impacts on an ongoing basis.

Proposed section 3931.11(i) would add a requirement for a review of the scientific data and analyses currently available at a reasonable cost, relevant to the potential effects of commercial oil shale operations on the air quality of the pertinent airshed.

Proposed section 3931.11(j) would require an integrated waste management plan:

(1) To conduct operations in a manner that minimizes the production of mine waste, and

(2) To provide for monitoring, adaptive management, and mitigation of adverse impacts, both during and after operations.

Proposed section 3931.11(k) would require an environmental protection plan:

(1) To conduct operations in a manner that minimizes adverse effects of oil shale operations on the:

- (a) Quality of the air and water;
- (b) Wildlife and native plants; and
- (c) Productivity of soils; and

(2) To provide for monitoring, adaptive management, and mitigation of adverse impacts, both during and after operations.

The BLM estimates that the watershed and groundwater protection plan, airshed review, integrated waste management plan, and environmental protection plan that would be required under proposed section 3931.11(h), (i), (j), and (k) would each require 10 hours to prepare/assemble. The proposed revisions to section 3911.11 would increase the burden hours associated with the plan of development from 308 hours to 348 hours.

## Authors

The principal authors of this proposed rule are Mitchell Leverette, Mary Linda Ponticelli, Larry Jackson, and Paul McNutt, Division of Solid Minerals (Washington Office) and the BLM's Division of Regulatory Affairs (Washington Office).

## List of Subjects

### 43 CFR Part 3900

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mineral royalties, Oil shale reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

### 43 CFR Part 3920

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Oil shale reserves, Public lands-mineral resources, Reporting and recordkeeping requirements.

### 43 CFR Part 3930

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil shale reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, for the reasons stated in the preamble and under the authorities stated below, the BLM proposes to amend 43 CFR parts 3900, 3920, and 3930 as set forth below:

## PART 3900—OIL SHALE MANAGEMENT—GENERAL

- 1. The authority citation for part 3900 continues to read as follows:

**Authority:** 30 U.S.C. 189, 359, and 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b) and 1740.

- 2. Amend § 3903.52 by revising paragraph (b) to read as follows:

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

#### § 3903.52 Production royalties.

\* \* \* \* \*

(b) The royalty rate will be set by the BLM in the notice of sale as provided in section 3924.5(b)(3) of this part or, for R, D and D conversion, will be established by the Secretary of the Interior.

## PART 3920—OIL SHALE LEASING

- 3. The authority citation for part 3920 continues to read as follows:

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

### Subpart 3925—Award of Lease

- 4. Amend § 3925.10 by revising paragraph (a) to read as follows:

#### § 3925.10 Award of lease.

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

FMV, except as provided in § 3924.10. The BLM will not issue a commercial lease unless it determines that oil shale operations can occur without unacceptable environmental risk. When the BLM determines that the lease should be issued, it will provide the successful bidder 3 copies of the oil shale lease form for execution. Commercial oil shale leases will be issued only under the procedures in this part.

\* \* \* \* \*

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

- 5. Amend § 3926.10 by revising paragraph (a) by adding a sentence to the end of the paragraph, by revising the introductory text of paragraph (c), and by adding paragraph (c)(6) to read as follows:

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

(a) \* \* \* The BLM may, in its discretion, deny an application to convert an R, D and D lease to a commercial lease based on environmental or other resource considerations.

\* \* \* \* \*

(c) The lessee of an R, D and D lease has the exclusive right to acquire any and all portions of the preference right area designated in the R, D and D lease, up to a total of 5,120 acres in the lease. The BLM may, in its discretion, deny an application to convert an R, D and D lease to a commercial lease based on environmental or other resource considerations. The BLM may approve the conversion application, in whole or in part, if it determines that:

\* \* \* \* \*

(6) Commercial scale operations can be conducted without unacceptable environmental risk.

\* \* \* \* \*

## PART 3930—MANAGEMENT OF OIL SHALE EXPLORATION AND LEASES

- 6. The authority citation for part 3930 continues to read as follows:

**Authority:** 25 U.S.C. 396d and 2107, 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b), 1733, and 1740.

### Subpart 3931—Plans of Development and Exploration Plans

- 7. Amend § 3931.10 by revising paragraph (e) and adding new paragraph (g) to read as follows:

**§ 3931.10 Exploration plans and plans of development for mining and in situ operations.**

\* \* \* \* \*

(e) All development and exploration activities must comply with the BLM-approved POD or exploration plan. The BLM will not approve a POD unless it determines that operations under the POD can occur without unacceptable environmental risk.

\* \* \* \* \*

(g) The BLM may deny a POD based on environmental or other resource considerations, or may require a modification of, or condition the POD to protect the environment or other resources.

■ 8. Amend § 3931.11 by adding new paragraphs (h), (i), (j), and (k) and redesignating existing paragraphs (h) as (l); (i) as (m); (j) as (n); and (k) as (o).

**§ 3931.11 Content of plan of development.**

\* \* \* \* \*

(h) A watershed and groundwater protection plan, which is a plan to conduct operations in a manner that protects surface and groundwater resources from adverse effects on the quality, quantity, timing, and distribution of water resulting from operations, and to monitor, adaptively manage, and mitigate adverse impacts, both during and after operations;

(i) An airshed review, which is a review of the scientific data and analyses currently available at a reasonable cost relevant to the potential effects of commercial oil shale operations on the air quality of the pertinent airshed. The review must provide the BLM with useful information to assess the effects of operations on the airshed;

(j) An integrated waste management plan, which is a plan to conduct

operations in a manner that minimizes the production of mine waste, and to monitor, adaptively manage, and mitigate the impacts of waste both during and after operations;

(k) An environmental protection plan, which is a plan to:

(1) Conduct operations in a manner that minimizes adverse effects of oil shale operations, on the:

(i) Quality of the air and water;

(ii) Wildlife and native plants; and

(iii) Productivity of soils; and

(2) Monitor, adaptively manage, and mitigate such adverse effects both during and after operations;

\* \* \* \* \*

Dated: March 22, 2013.

**Tommy P. Beaudreau,**

*Acting Assistant Secretary of the Interior,  
Land and Minerals Management.*

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