

Bureau of Land Management, Interior

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Owners owning 10 percent or more of the Working Interest in the participating land shall be required to select a new Unit Operator.

8.3 The selection of a successor Unit Operator shall not become effective until:

(a) The Unit Operator so selected shall accept in writing the duties, obligations and responsibilities of the Unit Operator, and

(b) The selection shall have been approved by the authorized officer.

8.4 If no successor Unit Operator is selected and qualified as herein provided, the Director at his election may declare this Agreement terminated.

ARTICLE IX—ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT

9.1 Costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of Working Interests; all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of Working Interests, whether one or more, separately or collectively.

9.2 Any agreement or agreements entered into between the Working Interest Owners and the Unit Operator as provided in this Article, whether one or more, are herein referred to as the "Unit Operating Agreement".

9.3 The Unit Operating Agreement shall provide the manner in which the Working Interest Owners shall be entitled to receive their respective share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other contracts, and such other rights and obligations, as between Unit Operator and the Working Interest Owners.

9.4 Neither the Unit Operating Agreement nor any amendment thereto shall be deemed either to modify any of the terms and conditions of this Agreement or to relieve the Unit Operator of any right or obligation established under this Agreement.

9.5 In case of any inconsistency or conflict between this Agreement and the Unit Operating Agreement, this Agreement shall govern.

9.6 Three true copies of any Unit Operating Agreement executed pursuant to this Article IX shall be filed with the authorized officer prior to approval of this Agreement.

ARTICLE X—RIGHTS AND OBLIGATIONS OF UNIT OPERATOR

10.1 The right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting, producing, distributing or utilizing Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator as provided in this Agreement in

accordance with a Plan of Operations approved by the authorized officer.

10.2 Upon request by Unit Operator, acceptable evidence of title to geothermal resources interests in the Unitized Land shall be deposited with the Unit Operator, and together with this Agreement shall constitute and define the rights, privileges, and obligations of Unit Operator.

10.3 Nothing in this Agreement shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that the Unit Operator, in its capacity as Unit Operator shall exercise the rights of possession and use vested in the parties hereto only for the purposes specified in this Agreement.

10.4 The Unit Operator shall take such measures as the authorized officer deems appropriate and adequate to prevent drainage of Unitized Substances from Unitized Land by wells on land not subject to this Agreement.

10.5 The Director is hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this Agreement.

ARTICLE XI—PLAN OF OPERATION

11.1 Concurrently with the submission of this Agreement for approval, Unit Operator shall submit an acceptable initial Plan of Operation. Said plan shall be as complete and adequate as the authorized officer may determine to be necessary for timely exploration and/or development and to insure proper protection of the environment and conservation of the natural resources of the Unit Area.

11.2 Prior to the expiration of the initial Plan of Operation, or any subsequent Plan of Operation, Unit Operator shall submit for approval of the authorized officer an acceptable subsequent Plan of Operation for the Unit Area which, when approved by the authorized officer, shall constitute the exploratory and/or development drilling and operating obligations of Unit Operators under this Agreement for the period specified therein.

11.3 Any plan of Operation submitted hereunder shall:

(a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling, and

(b) To the extent practicable, specify the operating practices regarded as necessary and advisable for proper conservation of natural resources and protection of the environment in compliance with section 1.1.

11.4 The Plan of Operation submitted concurrently with this Agreement for approval shall prescribe that within six (6) months after the effective date hereof, the Unit Operator shall begin to drill an adequate test

well at a location approved by the authorized officer, unless on such effective date a well is being drilled conformably with the terms, hereof, and thereafter continue such drilling diligently until the _____ formation has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (i.e., quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the authorized officer that further drilling of said well would be unwarranted or impracticable, *Provided, however*, That Unit Operator shall not in any event be required to drill said well to a depth in excess of _____ feet.

11.5 The initial Plan of Operation and/or subsequent Plans of Operation submitted under this article shall provide that the Unit Operator shall initiate a continuous drilling program providing for drilling of no less than one well at a time, and allowing no more than six (6) months time to elapse between completion of one well and the beginning of the next well, until a well capable of producing Unitized Substances in paying quantities is completed to the satisfaction of the authorized officer or until it is reasonably proved that the Unitized Land is incapable of producing Unitized Substances in paying quantities in the formations drilled under this Agreement.

11.6 When warranted by unforeseen circumstances, the authorized officer may grant a single extension of any or all of the critical dates for exploratory drilling operations cited in the initial or subsequent Plans of Operation. No such extension shall exceed a period of four (4) months for each well, required by the initial Plan of Operation.

11.7 Until there is actual production of Unitized Substances, the failure of Unit Operator to timely drill any of the wells provided for in Plans of Operation required under this Article XI or to timely submit an acceptable subsequent Plan of Operations, shall, after notice of default or notice of prospective default to Unit Operator by the authorized officer and after failure of Unit Operator to remedy any actual default within a reasonable time (as determined by the authorized officer), result in automatic termination of this Agreement effective as of the date of the default, as determined by the authorized officer.

11.8 Separate Plans of Operations may be submitted for separate productive zones, subject to the approval of the authorized officer. Also subject to the approval of the authorized officer, Plans of Operation shall be modified or supplemented when necessary to meet changes in conditions or to protect the interest of all parties to this Agreement.

ARTICLE XII—PARTICIPATING AREAS

12.1 Prior to the commencement of production of Unitized Substances, the Unit Operator shall submit for approval by the authorized officer a schedule (or schedules) of all land then regarded as reasonably proved to be productive from a pool or deposit discovered or developed; all lands in said schedule (or schedules), on approval of the authorized officer, will constitute a Participating Area (or Areas) effective as of the date production commences or the effective date of this Unit Agreement, whichever is later. Said schedule (or schedules) shall also set forth the percentage of Unitized Substances to be allocated, as herein provided, to each tract in the Participating Area (or Areas) so established and shall govern the allocation of production commencing with the effective date of the Participating Area.

12.2 A separate Participating Area shall be established for each separate pool or deposit of Unitized Substances or for any group thereof which is produced as a single pool or deposit and any two or more Participating Areas so established may be combined into one, on approval of the authorized officer. The effective date of any Participating Area established after the commencement of actual production of Unitized Substances shall be the first of the month in which is obtained the knowledge or information on which the establishment of said Participating Area is based, unless a more appropriate effective date is proposed by the Unit Operator and approved by the authorized officer.

12.3 Any Participating Area (or Areas) established under 12.1 or 12.2 above shall, subject to the approval of the authorized officer, be revised from time to time to include additional land then regarded as reasonably proved to be productive from the pool or deposit for which the Participating Area was established or to include lands necessary to unit operations, or to exclude land then regarded as reasonably proved not to be productive from the pool or deposit for which the Participating Area was established or to exclude land not necessary to unit operations and the schedule (or schedules) of allocation percentages shall be revised accordingly.

12.4 Subject to the limitation cited in 12.1 hereof, the effective date of any revision of a Participating Area established under Articles 12.1 or 12.2 shall be the first of the month in which is obtained the knowledge or information on which such revision is predicated, provided, however, that a more appropriate effective date may be used if justified by the Unit Operator and approved by the authorized officer.

12.5 No land shall be excluded from a Participating Area on account of depletion of the Unitized Substances, except that any

Participating Area established under the provisions of this Article XII shall terminate automatically whenever all operations are abandoned in the pool or deposit for which the Participating Area was established.

12.6 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of a Participating Area.

ARTICLE XIII—ALLOCATION OF UNITIZED SUBSTANCES

13.1 All Unitized Substances produced from a Participating Area, established under this Agreement, shall be deemed to be produced equally on an acreage basis from the several tracts of Unitized Land within the Participating Area established for such production.

13.2 For the purpose of determining any benefits accruing under this Agreement, each Tract of Unitized Land shall have allocated to it such percentage of said production as the number of acres in the Tract included in the Participating Area bears to the total number of acres of Unitized Land in said Participating Area.

13.3 Allocation of production hereunder for purposes other than for settlement of the royalty obligations of the respective Working Interest Owners, shall be on the basis prescribed in the Unit Operating Agreement whether in conformity with the basis of allocation set forth above or otherwise.

13.4 The Unitized Substances produced from a Participating Area shall be allocated as provided herein regardless of whether any wells are drilled on any particular part or tract of said Participating Area.

ARTICLE XIV—RELINQUISHMENT OF LEASES

14.1 Pursuant to the provisions of the Federal leases and 43 CFR 3244.1, a lessee of record shall, subject to the provisions of the Unit Operating Agreement, have the right to relinquish any of its interests in leases committed hereto, in whole or in part; provided, that no relinquishment shall be made of interests in land within a Participating Area without the prior approval of the Director.

14.2 A Working Interest Owner may exercise the right to surrender, when such right is vested in it by any non-Federal lease, sublease, or operating agreement, provided that each party who will or might acquire the Working Interest in such lease by such surrender or by forfeiture is bound by the terms of this Agreement, and further provided that no relinquishment shall be made of such land within a Participating Area without the prior written consent of the non-Federal Lessor.

14.3 If, as the result of relinquishment, surrender, or forfeiture the Working Inter-

ests become vested in the fee owner or lessor of the Unitized Substances, such owner may:

(1) Accept those Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement; or

(2) Lease the portion of such land as is included in a Participating Area established hereunder, subject to this Agreement and the Unit Operating Agreement; and provide for the independent operation of any part of such land that is not then included within a Participating Area established hereunder.

14.4 If the fee owner or lessor of the Unitized Substances does not, (1) accept the Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or (2) lease such lands as provided in 14.3 above within six (6) months after the relinquished, surrendered, or forfeited Working Interest becomes vested in said fee owner or lessor, the Working Interest benefits and obligations accruing to such land under this Agreement and the Unit Operating Agreement shall be shared by the owners of the remaining unitized Working Interests in accordance with their respective Working Interest ownerships, and such owners of Working Interests shall compensate the fee owner or lessor of Unitized Substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease or leases in effect when the Working Interests were relinquished, surrendered, or forfeited.

14.5 Subject to the provisions of 14.4 above, an appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of any surrendered or forfeited Working Interest subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within thirty (30) days.

14.6 In the event no Unit Operating Agreement is in existence and a mutually acceptable agreement cannot be consummated between the proper parties, the authorized officer may prescribe such reasonable and equitable conditions of agreement as he deems warranted under the circumstances.

14.7 The exercise of any right vested in a Working Interest Owner to reassign such Working Interest to the party from whom obtained shall be subject to the same conditions as set forth in this Article XIV in regard to the exercise of a right to surrender.

ARTICLE XV—RENTALS AND MINIMUM ROYALTIES

15.1 Any unitized lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring

such drilling operations, the rentals required thereby shall, notwithstanding any other provisions of this Agreement, be deemed to accrue as to the portion of the lease not included within a Participating Area and become payable during the term thereof as extended by this Agreement, and until the required drillings are commenced upon the land covered thereby.

15.2 Rentals are payable on Federal leases on or before the anniversary date of each lease year; minimum royalties accrue from the anniversary date of each lease year and are payable at the end of the lease year.

15.3 Beginning with the lease year commencing on or after _____ and for each lease year thereafter, rental or minimum royalty for lands of the United States subject to this Agreement shall be made on the following basis:

(a) An advance annual rental in the amount prescribed in unitized Federal leases, in no event creditable against production royalties, shall be paid for each acre or fraction thereof which is not within a Participating Area.

(b) A minimum royalty shall be charged at the beginning of each lease year (such minimum royalty to be due as of the last day of the lease year and payable within thirty (30) days thereafter) of \$2 an acre or fraction thereof, for all Unitized Acreage within a Participating Area as of the beginning of the lease year. If there is production during the lease year the deficit, if any, between the actual royalty paid and the minimum royalty prescribed herein shall be paid.

15.4 Rental or minimum royalties due on leases committed hereto shall be paid by Working Interest Owners responsible therefor under existing contracts, laws, and regulations, or by the Unit Operator.

15.5 Settlement for royalty interest shall be made by Working Interest Owners responsible therefor under existing contracts, laws, and regulations, or by the Unit Operator, on or before the last day of each month for Unitized Substances produced during the preceding calendar month.

15.6 Royalty due the United States shall be computed as provided in the operating regulations and paid in value as to all Unitized Substances on the basis of the amounts thereof allocated to unitized Federal land as provided herein at the royalty rate or rates specified in the respective Federal leases.

15.7 Nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any rental, minimum royalty, or royalty due under their leases.

ARTICLE XVI—OPERATIONS ON
NONPARTICIPATING LAND

16.1 Any party hereto owning or controlling the Working Interest in any Unitized Land having thereon a regular well location

may, with the approval of the authorized officer and at such party's sole risk, costs, and expense, drill a well to test any formation of deposit for which a Participating Area has not been established or to test any formation or deposit for which a Participating Area has been established if such location is not within said Participating Area, unless within 30 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill such a well in like manner as other wells are drilled by the Unit Operator under this Agreement.

16.2 If any well drilled by a Working Interest Owner other than the Unit Operator proves that the land upon which said well is situated may properly be included in a Participating Area, such Participating Area shall be established or enlarged as provided in this Agreement and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this Agreement and the Unit Operating Agreement.

ARTICLE XVII—LEASES AND CONTRACTS
CONFORMED AND EXTENDED

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or utilization of geothermal resources on lands committed to this Agreement, are hereby expressly modified and amended only to the extent necessary to make the same conform to the provisions hereof, otherwise said leases, subleases, and contracts shall remain in full force and effect.

17.2 The parties hereto consent that the Secretary shall, by his approval hereof, modify and amend the Federal leases committed hereto and the regulations in respect thereto to the extent necessary to conform said leases and regulations to the provisions of this Agreement.

17.3 The development and/or operation of lands subject to this Agreement under the terms hereof shall be deemed full performance of any obligations for development and operation with respect to each and every separately owned tract subject to this Agreement, regardless of whether there is any development of any particular tract of the Unit Area.

17.4 Drilling and/or producing operations performed hereunder upon any tract of Unitized Lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of Unitized Land.

17.5 Suspension of operations and/or production on all Unitized Lands pursuant to direction or consent of the Secretary or his duly authorized representative shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of Unitized Land. A suspension of operations and/or production limited to specified lands shall be applicable only to such lands.

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17.6 Subject to the provisions of Article XV hereof and 17.10 of this Article, each lease, sublease, or contract relating to the exploration, drilling, development, or utilization of geothermal resources of lands other than those of the United States committed to this Agreement, is hereby extended beyond any such term so provided therein so that it shall be continued for and during the term of this Agreement.

17.7 Subject to the lease renewal and the readjustment provision of the Act, any Federal lease committed hereto may, as to the Unitized Lands, be continued for the term so provided therein, or as extended by law. This subsection shall not operate to extend any lease or portion thereof as to lands excluded from the Unit Area by the contraction thereof.

17.8 Each sublease or contract relating to the operations and development of Unitized Substances from lands of the United States committed to this Agreement shall be continued in force and effect for and during the term of the underlying lease.

17.9 Any Federal lease heretofore or hereafter committed to any such unit plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization.

17.10 In the absence of any specific lease provision to the contrary, any lease, other than a Federal lease, having only a portion of its land committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

17.11 Upon termination of this Agreement, the leases covered hereby may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions of the Act, the lease or leases, and amendments thereto.

ARTICLE XVIII—EFFECTIVE DATE AND TERM

18.1 This Agreement shall become effective upon approval by the Secretary or his duly authorized representative and shall terminate five (5) years from said effective date unless,

(a) Such date of expiration is extended by the Director, or

(b) Unitized Substances are produced or utilized in commercial quantities in which event this Agreement shall continue for so long as Unitized Substances are produced or utilized in commercial quantities, or

(c) This Agreement is terminated prior to the end of said five (5) year period as heretofore provided.

18.2 This Agreement may be terminated at any time by the owners of a majority of the Working Interests, on an acreage basis, with the approval of the authorized officer. Notice of any such approval shall be given by the Unit Operator to all parties hereto.

ARTICLE XIX—APPEARANCES

19.1 Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior, and to appeal from decisions, orders or rulings issued under the regulations of said Department, or to apply for relief from any of said regulations or in any proceedings relative to operations before the Department of the Interior or any other legally constituted authority; *Provided, however,* That any interested parties shall also have the right, at its own expenses, to be heard in any such proceeding.

ARTICLE XX—NO WAIVER OF CERTAIN RIGHTS

20.1 Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the State wherein lands subject to this Agreement are located, or of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond his or its authority to waive.

ARTICLE XXI—UNAVOIDABLE DELAY

21.1 The obligations imposed by this Agreement requiring Unit Operator to commence or continue drilling or to produce or utilize Unitized Substances from any of the land covered by this Agreement, shall be suspended while, but only so long as, Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, Acts of God, Federal or other applicable law, Federal or other authorized governmental agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials in open market, or other matters beyond the reasonable control of Unit Operator, whether similar to matters herein enumerated or not.

21.2 No unit obligation which is suspended under this section shall become due less than thirty (30) days after it has been determined that the suspension is no longer applicable.

21.3 Determination of creditable "Unavoidable Delay" time shall be made by the Unit Operator subject to approval of the authorized officer.

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ARTICLE XXII—POSTPONEMENT OF OBLIGATIONS

22.1 Notwithstanding any other provisions of this Agreement, the Director, on his own initiative or upon appropriate justification by Unit Operator, may postpone any obligation established by and under this Agreement to commence or continue drilling or to operate on or produce Unitized Substances from lands covered by this Agreement when in his judgement, circumstances warrant such action.

ARTICLE XXIII—NONDISCRIMINATION

23.1 In connection with the performance of work under this Agreement, the Operator agrees to comply with all of the provisions of section 202 (1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), which are hereby incorporated by reference in this Agreement.

ARTICLE XXIV—COUNTERPARTS

24.1 This Agreement may be executed in any number of counterparts no one of which needs to be executed by all parties, or may be ratified or consented to by separate instruments in writing specifically referring hereto, and shall be binding upon all parties who have executed such a counterpart, ratification or consent hereto, with the same force and effect as if all such parties had signed the same document.

ARTICLE XXV—SUBSEQUENT JOINDER

25.1 If the owner of any substantial interest in geothermal resources under a tract within the Unit Area fails or refuses to subscribe or consent to this Agreement, the owner of the Working Interest in that tract may withdraw said tract from this Agreement by written notice delivered to the authorized officer and the Unit Operator prior to the approval of this Agreement by the authorized officer.

25.2 Any geothermal resources interests in lands within the Unit Area not committed hereto prior to approval of this Agreement may thereafter be committed by the owner or owners thereof subscribing or consenting to this Agreement, and, if the interest is a Working Interest, by the owner of such interest also subscribing to the Unit Operating Agreement.

25.3 After operations are commenced hereunder, the right of subsequent joinder, as provided in this Article XXV, by a working interest owner is subject to such requirements or approvals, if any, pertaining to such joinder, as may be provided for in the Unit Operating Agreement. Joinder to the Unit Agreement by a Working Interest Owner, at any time, must be accompanied by appropriate joinder to the Unit Operating Agreement, if more than one committed Working Interest Owner is involved, in order

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for the interest to be regarded as committed to this Unit Agreement.

25.4 After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the Working Interest Owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this Agreement unless the corresponding Working Interest is committed hereto.

25.5 Except as may otherwise herein be provided, subsequent joinders to this Agreement shall be effective as of the first day of the month following the filing with the authorized officer of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this Agreement unless objection to such joinder is duly made within sixty (60) days by the authorized officer.

ARTICLE XXVI—COVENANTS RUN WITH THE LAND

26.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance, of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

26.2 No assignment or transfer of any Working Interest or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

ARTICLE XXVII—NOTICES

27.1 All notices, demands or statements required hereunder to be given or rendered to the parties hereto shall be deemed fully given if given in writing and personally delivered to the party or sent by postpaid registered or certified mail, addressed to such party or parties at their respective addresses set forth in connection with the signatures hereto or to the ratification or consent hereto or to such other address as any such party may have furnished in writing to party sending the notice, demand or statement.

ARTICLE XXVIII—LOSS OF TITLE

28.1 In the event title to any tract of Unitized Land shall fail and the true owner cannot be induced to join in this Agreement, such tract shall be automatically regarded as not committed hereto and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title.

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28.2 In the event of a dispute as to title as to any royalty, Working Interest, or other interests subject hereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled: *Provided*, That, as to Federal land or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the authorized officer to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

ARTICLE XXIX—TAXES

29.1 The Working Interest Owners shall render and pay for their accounts and the accounts of the owners of nonworking interests all valid taxes on or measured by the Unitized Substances in and under or that may be produced, gathered, and sold or utilized from the land subject to this Agreement after the effective date hereof.

29.2 The Working Interest Owners on each tract may charge a proper proportion of the taxes paid under 29.1 hereof to the owners of nonworking interests in said tract, and may reduce the allocated share of each royalty owner for taxes so paid. No taxes shall be charged to the United States or the State of _____ or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

ARTICLE XXX—RELATION OF PARTIES

30.1 It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing in this Agreement contained, expressed, or implied,

nor any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

ARTICLE XXXI—SPECIAL FEDERAL LEASE STIPULATIONS AND/OR CONDITIONS

31.1 Nothing in this Agreement shall modify special lease stipulations and/or conditions applicable to lands of the United States. No modification of the conditions necessary to protect the lands or functions of lands under the jurisdiction of any Federal agency is authorized except with prior consent in writing whereby the authorizing official specifies the modification permitted.

In witness whereof, the parties hereto have caused this Agreement to be executed and have set opposite their respective names the date of execution.

Unit operator (as unit operator and as working interest owner) _____

Witnesses:

Witnesses:

By _____

Working Interest Owners:

Witnesses:

By _____

Other Interest Owners:

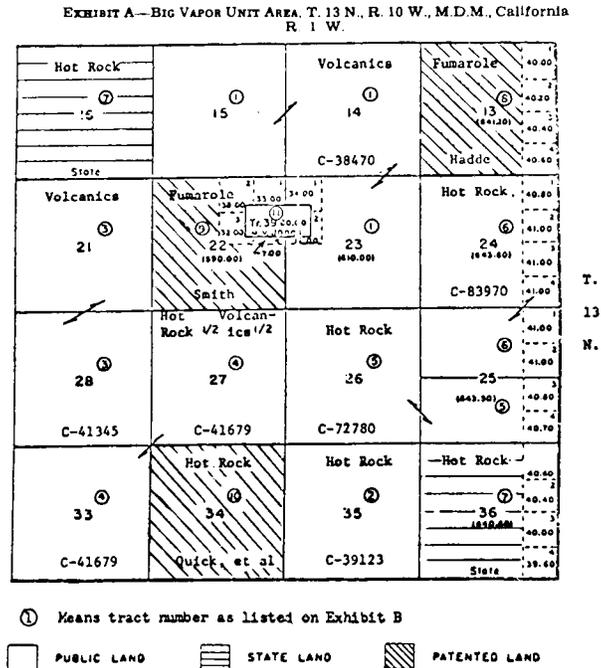
By _____

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44793, Sept. 30, 1983]

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§ 3286.1-1 Model Exhibit "A".



[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.1-2 Model Exhibit "B".

EXHIBIT B—BIG VAPOR UNIT AREA, NAPA COUNTY, CALIF., T. 13 N., R. 10 W.

Tract No.	Description of land	Number of acres	Serial number and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Working interest and percentage
	<i>Federal land</i>	<i>serials</i>	<i>California.</i>			
1	Sec. 14: All Sec. 15: All Sec. 23: Lots 1, 2, S½, NE¼, E½NW¼.	1,890.00	38470 7-31-82.	United States: All	Volcanics, Inc.	Volcanics, Inc.: All.
2	Sec. 35: All	640.00	39123 7-31-82.	.....do	D. H. Boiler	Hot Rock Co.: All.
3	Sec. 21: All Sec. 28: All	1,280.00	41345 7-31-81	.....do	C. S. Waters—50% D. F. Mann—50%	Volcanics, Co.: 50%. Hot Rock Co.: 50%.
4	Sec. 27: All Sec. 33: All	1,280.00	41679	.....do	H. C. Pipes	Fumarole, Ltd.: All.
5	Sec. 26: All Sec. 25: S½.	961.50	71278	.....do	Hot Rock Co	Hot Rock Co.: All.
6	Sec. 24: All Sec. 25: N½	965.80	83970 Appl.	.....do	H. C. Pipes	Do.
6 Federal tracts 7,017.30 acres or 68.47% of unit area.						
7	<i>California. State land.</i> Sec. 16: All	1,280.60	65-67430	State of California: All	Hot Rock Co	Hot Rock Co.: All.

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EXHIBIT B—BIG VAPOR UNIT AREA, NAPA COUNTY, CALIF., T. 13 N., R. 10 W.—Continued

Tract No.	Description of land	Number of acres	Serial number and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Working interest and percentage
.....	Sec. 36: All.					
1 State tract 1,280.60 acres or 12.49% of unit area.						
<i>Patented land.</i>						
8	Sec. 13: All	641.20	6-30-79	I. B. Hadde: All	Fumarole, Ltd	Fumarole, Ltd.: All.
9	Sec. 22: Lots 1, 2, 3, 4, S½, NW¼.	590.00	2-28-81	J. P. Smith: All .....	.....do	Do.
10	Sec. 34: All	640.00	3-31-81	A. G. Quick: 75%	Hot Rock Co	Hot Rock Co.: All.
11	Tract 39	80.00	4-30-81	P. T. Land: 25%. M. V. Jones: All	Unleased	M. V. Jones: All.
4 Patented tracts 1,951.20 acres or 19.04% of unit area.						
Total—11 tracts 10, 249.10 acres in entire unit area.						

§ 3286.2 Model unit bond.

COLLECTIVE CORPORATE SURETY

Know all men by these presents, That we, _____ (Name of Unit Operator) signing as Principal, for and on behalf of the record owners of unitized substances now or hereafter covered by the unit agreement for this _____ (Name of Unit) approved _____, (Date) _____, (Name and address of Surety) as Surety are jointly and severally held and firmly bound unto the United States of America in the sum of _____ (Amount of bond) Dollars, lawful money of the United States, for the use and benefit of and to be paid to the United States and any entryman or patentee of any portion of the unitized land, heretofore entered or patented with the reservation of the geothermal resources deposits to the United States, for which payment well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns by these presents.

The condition of the foregoing obligation is such that, whereas the Secretary on _____ (Date) approved under the provisions of the Geothermal Steam Act of 1970, a unit agreement for the development and operation of the _____ (Name of Unit and State); and

Whereas said Principal and record owners of unitized substances, pursuant to said unit agreement, have entered into certain covenants and agreements as set forth therein, under which operations are to be conducted; and

Whereas said Principal as Unit Operator has assumed the duties and obligations of the respective owners of unitized substances as defined in said unit agreement; and

Whereas said Principal and surety agree to remain bound in the full amount of the bond for failure to comply with the terms of the

unit agreement, and the payment of rentals, minimum royalties, and royalties due under the Federal leases committed to said unit agreement; and

Whereas the Surety hereby waives any right of notice of and agrees that this bond may remain in force and effect notwithstanding:

(a) Any additions to or change in the ownership of the unitized substances herein described.

(b) Any suspension of the drilling or producing requirements or waiver, suspension or reduction of rental or minimum royalty payments or reduction of royalties pursuant to applicable laws or regulations thereunder; and

Whereas said Principal and Surety agree to the payment of compensatory royalty under the regulations of the Interior Department in lieu of drilling necessary offset wells in the event of drainage; and

Whereas nothing herein contained shall preclude the United States from requiring an additional bond at any time when deemed necessary:

Now, therefore, if the said Principal shall faithfully comply with all of the provisions of the above-identified unit agreement and with the terms of the leases committed thereto, then the above obligation is to be of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered this _____ day of _____, 19____, in the presence of:
Witnesses:

(Principal)

(Surety)

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.3

§ 3286.3 Model designation of successor operator.

Designation of successor Unit Operator _____, Unit Area, County of _____, State of _____, No. _____.

This indenture, dated as of the ____ day of _____, 19____, by and between _____, hereinafter designated as "First Party," and the owners of unitized working interest, hereinafter designated as "Second Parties."

Witnesseth: Whereas under the provisions of the Geothermal Steam Act of December 24, 1970, 84 Stat. 1566, the Secretary on the ____ day of _____, 19____, approved a unit agreement for the _____ Unit Area, wherein _____ is designated as Unit Operator; and

Whereas said _____ has resigned as such Operator,¹ and the designation of a successor Unit Operator is now required pursuant to the terms thereof; and

Whereas First Party has been and hereby is designated by Second Parties as a Unit Operator, and said First Party desires to assume all the rights, duties, and obligations of Unit Operator under the said unit agreement.

Now, therefore, in consideration of the premises hereinbefore set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the _____ unit agreement, and the Second Parties covenant and agree that, effective upon approval of this indenture by the authorized officer, of the Minerals Management Service, First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges and Unit Operator, pursuant to the terms and conditions of said unit agreement; said unit agreement being hereby incorporated herein by references and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

(First Party)

(Witnesses)

(Second Party)

(Witnesses)

¹ Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

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I hereby approve the foregoing indenture designating _____ as Unit Operator under the unit agreement for the _____ Unit Area, this ____ day of _____, 19____.

Authorized Officer,
Bureau of Land Management.

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.4 Model change of operator by assignment.

Change in Unit Operator _____ unit Area, County of _____, State of _____, No. _____.

This indenture, dated as of the ____ day of _____, 19____, by and between _____ hereinafter designated as "First Party," and _____, hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Geothermal Steam Act of December 24, 1970, 84 Stat. 1566, the Secretary on the ____ day of _____, 19____, approved a unit agreement for the _____ Unit Area, wherein the First Party is designated as Unit Operator; and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the rights, duties, and obligations of Unit Operator under the unit agreement; and

Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed and assigned all his/its rights under certain operating agreements involving lands within the area set forth in said unit agreement unto the Second Party;

Now, therefore, in consideration of the premises hereinbefore set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of First Party's rights, duties and obligations as Unit Operator under said unit agreement; and

Second Party hereby accept this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said unit agreement to the full extent set forth in this assignment, effective upon approval of this indenture by the authorized officer of the Minerals Management Service; said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

(First Party)

Bureau of Land Management, Interior

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(Witnesses)

(Second Party)

(Witnesses)

I hereby approve the foregoing indenture designated _____ as Unit Operator under the unit agreement for the _____ Unit Area, this ____ day of _____, 19____.

Authorized Officer,
Bureau of Land Management.

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

Group 3400—Coal Management

NOTE: The information collection requirements contained in parts 3400, 3410, 3420, 3430, 3450, 3460 and 3470 of Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0073. The information is being collected to allow the authorized officer to determine if the applicant to lease, for or develop Federal coal is qualified to hold such lease. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.
(See 47 FR 33133, July 30, 1982)

**PART 3400—COAL MANAGEMENT:
GENERAL**

Subpart 3400—Introduction: General

- Sec.
- 3400.0-3 Authority.
- 3400.0-5 Definitions.
- 3400.1 Multiple development.
- 3400.2 Lands subject to leasing.
- 3400.3 Limitations on authority to lease.
- 3400.3-1 Consent or conditions of surface management agency.
- 3400.3-2 Department of Defense lands.
- 3400.3-3 Department of Agriculture lands.
- 3400.3-4 Trust protection lands.
- 3400.4 Federal/state government cooperation.
- 3400.5 Coal production regions.
- 3400.6 Minimum comment period.

AUTHORITY: 30 U.S.C. 189, 359, 1211, 1251, 1266, and 1273; and 43 U.S.C. 1461, 1733, and 1740.

SOURCE: 44 FR 42609, July 19, 1979, unless otherwise noted.

**Subpart 3400—Introduction:
General**

§ 3400.0-3 Authority.

(a) These regulations are issued under the authority of and to implement provisions of:

- (1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*).
- (2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359 *et seq.*).
- (3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 *et seq.*).
- (4) The Surface Mining Control and Reclamation Act of 1977, August 3, 1977 (30 U.S.C. 1201 *et seq.*).
- (5) The Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521-531 *et seq.*).
- (6) The Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 *et seq.*).
- (7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
- (8) The Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092).
- (9) The Act of October 30, 1978 (92 Stat. 2073-2075).

(b) Specific citations of authority in subsequent subparts of this Group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

(c) *Bonus* means that value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership that is paid as part of the consideration for receiving a lease.

(d) *Bypass coal* means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any mining operation other than that of the

(e) *Alluvial valley floor* has the meaning set forth in 30 CFR Chapter VII.

(f) *Authorized officer* means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(g) *Authorized officer* means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(h) *Authorized officer* means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

§ 3400.0-5 Definitions.

As used in this group:

(a) *Alluvial valley floor* has the meaning set forth in 30 CFR Chapter VII.

(b) *Authorized officer* means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(c) *Bonus* means that value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership that is paid as part of the consideration for receiving a lease.

(d) *Bypass coal* means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any mining operation other than that of the

applicant for either an emergency lease under the provisions of § 3425.1-4 of this title or a lease modification.

(e) *Casual use* means activities which do not ordinarily lead to any appreciable disturbance or damage to lands, resources or improvements, for example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over already established roads and trails.

(f) *Certificate of bidding rights* means a right granted by the Secretary to apply the fair market value of a relinquished coal or other mineral lease or right to a preference right coal or other mineral lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales, or as a credit against the payment required for a coal lease modification.

(g) *Coal deposits* mean all Federally owned coal deposits, except those held in trust for Indians.

(h) *Department* means the United States Department of the Interior.

(i) *Director* means the Director of the Bureau of Land Management unless otherwise indicated.

(j) *Environmental assessment* means a document prepared by the responsible Federal agency consistent with 40 CFR 1508.9.

(k) *Exploration* has the meaning set forth in § 3480.0-5(a)(17) of this title.

(l) *Exploration license* means a license issued by the authorized officer to permit the licensee to explore for coal on unleased Federal lands.

(m) *Exploration plan* has the meaning set forth in § 3480.0-5(a)(18) of this title.

(n) *Fair market value* means that amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell or lease to a knowledgeable purchaser who desires but is not obligated to buy or lease.

(o) *Federal lands* mean lands owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands, including surface estate, mineral estate and coal estate, but excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(p) *Governmental entity* means a Federal or state agency or a political subdivision of a state, including a county or a municipality, or any corporation acting primarily as an agency or instrumentality of a state, which produces electrical energy for sale to the public.

(q) *Interest* in a lease, application or bid means: any record title interest, overriding royalty interest, working interest, operating rights or option, or any agreement covering such an interest; any claim or any prospective or future claim to an advantage or benefit from a lease; and any 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 the lease based on or pursuant to any agreement or understanding existing when the application was filed or entered into while the lease application or bid is pending. Stock ownership or stock control does not constitute an interest in a lease within the meaning of this definition. Attribution of acreage to stock ownership interests in leases is covered by § 3472.1-3(b) of this title.

(r) *Lease* means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which grants the exclusive right to explore for and extract coal. In provisions of this group that also refer to Federal leases for minerals other than coal, the term *Federal coal lease* may apply.

(s) *Lease bond* means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or exploration plan. This is the same as the *Federal lease bond* referred to in 30 CFR 742.11(a).

(t) *Licensee* means the holder of an exploration license.

(u) *License to mine* means a license issued under the provisions of part 3440 to mine coal for domestic use.

(v) *Logical Mining Unit* has the meaning set forth in § 3480.0-5(a)(22) of this title.

(w) *Logical Mining Unit reserves* has the meaning set forth in the term *logical mining unit recoverable coal reserves* in § 3480.0-5(a)(23) of this title.

(x) *Maximum economic recovery* has the meaning set forth in § 3480.0-5(a)(24) of this title.

(y) *Mineral leasing laws* mean the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359).

(z) *Mining plan* means a resource recovery and protection plan as described in § 3480.0-5(a)(39) of this title.

(aa) *Mining Supervisor* means the authorized officer.

(bb) *Mining unit* means an area containing technically recoverable coal that will feasibly support a commercial mining operation. The coal may either be Federal coal or be both Federal and non-Federal coal.

(cc) *Operator* means a lessee, exploration licensee or one conducting operations on a lease or exploration license under the authority of the lessee or exploration licensee.

(dd) *Permit* has the meaning set forth in 30 CFR Chapter VII.

(ee) *Permit area* has the meaning set forth in 30 CFR Chapter VII.

(ff) *Public bodies* means Federal and state agencies; political subdivisions of a state, including counties and municipalities; rural electric cooperatives and similar organizations; and nonprofit corporations controlled by any such entities.

(gg) *Qualified surface owner* means the natural person or persons (or corporation, the majority stock of which is held by a person or persons otherwise meeting the requirements of this section) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (gg) (1) and (2) of this section for a period of at least 3 years, except for persons who gave written consent

less than 3 years after they met the requirements of both paragraphs (gg) (1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this section.

(hh) *Reserves* has the meaning set forth in the term *recoverable coal reserves* in § 3480.0-5(a)(37) of this title.

(ii) *Secretary* means the Secretary of the Interior.

(jj) *Sole party in interest* means a party who is and will be vested with all legal and equitable rights under a lease, bid, or an application for a lease. No one is a sole party in interest with respect to a lease or bid in which any other party has any interest.

(kk) *Split estate* means land in which the ownership of the surface is held by persons, including governmental bodies, other than the Federal government and the ownership of underlying coal is, in whole or in part, reserved to the Federal government.

(ll) *Substantial legal and financial commitments* means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling and preparation, extraction or storage facilities and other capital intensive activities. Costs of acquiring the coal in place or of the right to mine it without an existing mine are not sufficient to constitute *substantial legal and financial commitments*.

(mm) *Surface coal mining operations* means activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28)).

(nn) *Surface management agency* means the Federal agency with jurisdiction over the surface of federally owned lands containing coal deposits, and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the Forest Service.

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(oo) *Surface Mining Officer* means the regulatory authority as defined in 30 CFR Chapter VII.

(pp) *Valid existing rights* as used in § 3461.1 of this title is defined in 30 CFR 761.5.

(qq) *Written consent* means the document or documents that a qualified surface owner has signed that:

(1) Permit a coal operator to enter and commence surface mining of coal;

(2) Describe any financial or other consideration given or promised in return for the permission, including in-kind considerations;

(3) Describe any consideration given in terms of type or method of operation or reclamation for the area;

(4) Contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(5) Contain a full and accurate description of the area covered by the permission.

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) *Arm's length transaction* means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) *Bracket* means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of part 3480 of this title on the date of first production.

(3) *Controlled by or under common control with*, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) *Entity* means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) *Holds and has held* means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The

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holds and has held requirement of section 2(a)(2)(A) of the Act is working interest holder-specific for each lease. *Working interest* includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) *Producing* means actually severing coal. A lease is also considered producing when:

(i) The operator/lessee is processing or loading severed coal, or transporting it from the point of severance to the point of sale; or

(ii) Coal severance is temporarily interrupted in accordance with §§ 3481.4–1 through 4–4 of this chapter.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33133, 33134, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985; 51 FR 43921, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987; 62 FR 44369, Aug. 20, 1997]

§ 3400.1 Multiple development.

(a) The granting of an exploration license, a license to mine or a lease for the exploration, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

(b) The presence of deposits of other minerals or the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;

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(2) The National Wildlife Refuge System;

(3) The National Wilderness Preservation System;

(4) The National System of Trails;

(5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns, and villages;

(7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and

(8) National Recreation Areas designated by law;

(b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States; and

(c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

§ 3400.3 Limitations on authority to lease.

§ 3400.3-1 Consent or conditions of surface management agency.

Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits, and subject to such conditions as that officer may prescribe to insure the use and protection of the lands for the primary purpose for which they were acquired or are being administered.

§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

(a) Produces electrical energy for sale to the public;

(b) Is located in the state in which the leased lands are located; and

(c) Has production facilities in that state, and will use the coal produced from the lease within that state.

§ 3400.3-3 Department of Agriculture lands.

Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within the National Forest System, provided that such leases may not be issued on lands within a national forest unless the tract is assessed to be acceptable for all or certain stipulated methods of surface coal mining operations under the provisions of Criterion No. 1 in § 3461.1 of this title.

§ 3400.3-4 Trust protection lands.

The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3400.0-5(o). Regulations governing those deposits are found in 25 CFR Chapter I.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.4 Federal/state government cooperation.

(a) In order to implement the requirements of law for Federal-state cooperation in the management of Federal lands, a Department-state regional coal team shall be established for each coal production region defined pursuant to § 3400.5. The team shall consist of a Bureau of Land Management field representative for each state in the region, who will be the Bureau of Land Management State Director, or, in his absence, his designated representative; the Governor of each state included in the region or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairperson of the team. If the region is a multi-state region under the jurisdiction of only one Bureau of Land Management State Office, each State Director shall designate a Bureau of Land Management representative for each state.

(b) Each regional coal team shall guide all phases of the coal activity

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planning process described in §§ 3420.3 through 3420.3-4 of this title which relate to competitive leasing in the region.

(c) The regional coal team shall also serve as the forum for Department/state consultation and cooperation in all other major Department coal management program decisions in the region, including preference right lease applications, public body and small business setaside leasing, emergency leasing and exchanges.

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3-4(g) shall be accepted except:

(1) In the case of an overriding national interest; or

(2) In the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4-3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

(e) Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. Participation may be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct surface management responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations, the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

(f) If a state declines to participate under this section in the coal-related activities of the Department:

(1) The Department may take action authorized in Group 3400 of this title in a coal production region wholly within such a state without forming a regional coal team, and

(2) The Department may form a regional coal team without a representa-

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tive of the Governor of such a state in any multi-state coal production region.

(g) The regional coal team will function under the public participation procedures at §§ 1784.4-2, 1784.4-3, and 1784.5 of this chapter.

[44 FR 42609, July 19, 1979; 44 FR 56339, Oct. 1, 1979, as amended at 47 FR 33134, 33135, July 30, 1982; 51 FR 18887, May 23, 1986; 64 FR 52242, Sept. 28, 1999]

EFFECTIVE DATE NOTE: At 64 FR 52242, Sept. 28, 1999, § 3400.4 was amended by revising paragraph (g), effective Oct. 28, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 3400.4 Federal/state government cooperation.

* * * * *

(g) The regional coal team shall function under the general provisions of the cooperative procedures of subpart 1784 of this title.

§ 3400.5 Coal production regions.

The Bureau of Land Management shall establish by publication in the FEDERAL REGISTER coal production regions. A coal production region may be changed or its boundaries altered by publication of a notice of change in the FEDERAL REGISTER. Coal production regions shall be used for establishing regional leasing levels under § 3420.2 of this title. Coal production regions shall be used to establish areas in which leasing shall be conducted under § 3420.3 of this title and for other purposes of the coal management program.

[47 FR 33135, July 30, 1982]

§ 3400.6 Minimum comment period.

Unless otherwise required in Group 3400 of this title, a minimum period of 30 days shall be allowed for public review and comment where such review is required for Federal coal management program activities under Group 3400 of this title.

[51 FR 18887, May 23, 1986]

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

Sec.
3410.0-1 Purpose.
3410.0-2 Objective.