

tential shall consider geothermal leasing and development.

**(2) Administration**

An application described in paragraph (1) and any lease issued pursuant to the application—

(A) except as provided in subparagraph (B), shall be subject to this section as in effect on the day before August 8, 2005; or

(B) at the election of the applicant, shall be subject to this section as in effect on August 8, 2005.

**(e) Leases sold as a block**

If information is available to the Secretary indicating a geothermal resource that could be produced as 1 unit can reasonably be expected to underlie more than 1 parcel to be offered in a competitive lease sale, the parcels for such a resource may be offered for bidding as a block in the competitive lease sale.

**(f) Leasing for direct use of geothermal resources**

Notwithstanding subsection (b), the Secretary may identify areas in which the land to be leased under this chapter exclusively for direct use of geothermal resources, without sale for purposes other than commercial generation of electricity, may be leased to any qualified applicant that first applies for such a lease under regulations issued by the Secretary, if the Secretary—

(1) publishes a notice of the land proposed for leasing not later than 90 days before the date of the issuance of the lease;

(2) does not receive during the 90-day period beginning on the date of the publication any nomination to include the land concerned in the next competitive lease sale; and

(3) determines there is no competitive interest in the geothermal resources in the land to be leased.

**(g) Area subject to lease for direct use**

**(1) In general**

Subject to paragraph (2), a geothermal lease for the direct use of geothermal resources shall cover not more than the quantity of acreage determined by the Secretary to be reasonably necessary for the proposed use.

**(2) Limitations**

The quantity of acreage covered by the lease shall not exceed the limitations established under section 1006 of this title.

(Pub. L. 91-581, §4, Dec. 24, 1970, 84 Stat. 1566; Pub. L. 109-58, title II, §§222, 223(b), Aug. 8, 2005, 119 Stat. 660, 662.)

CODIFICATION

August 8, 2005, referred to in subsec. (d)(1), was in the original “the date of enactment of this subsection” which was translated as meaning the date of enactment of Pub. L. 109-58, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109-58, §222, inserted section catchline and amended text generally. Prior to amendment, text related to competitive bidding requirements, conversion of prior leases to geothermal leases, conflicting

land interests, conversion of prior applications, acreage limitation, regulations, and time for payment.

Subsecs. (f), (g). Pub. L. 109-58, §223(b), added subsecs. (f) and (g).

**§ 1004. Rents and royalties**

**(a) In general**

Geothermal leases shall provide for—

(1) a royalty on electricity produced using geothermal resources, other than direct use of geothermal resources, that shall be—

(A) not less than 1 percent and not more than 2.5 percent of the gross proceeds from the sale of electricity produced from such resources during the first 10 years of production under the lease; and

(B) not less than 2 and not more than 5 percent of the gross proceeds from the sale of electricity produced from such resources during each year after such 10-year period;

(2) a royalty on any byproduct that is a mineral specified in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act [30 U.S.C. 181 et seq.] to production of the mineral under a lease under that Act; and

(3) payment in advance of an annual rental of not less than—

(A) for each of the 1st through 10th years of the lease—

(i) in the case of a lease awarded in a noncompetitive lease sale, \$1 per acre or fraction thereof; or

(ii) in the case of a lease awarded in a competitive lease sale, \$2 per acre or fraction thereof for the 1st year and \$3 per acre or fraction thereof for each of the 2nd through 10th years; and

(B) for each year after the 10th year of the lease, \$5 per acre or fraction thereof;<sup>1</sup>

**(b) Direct use**

**(1) In general**

Notwithstanding subsection (a)(1), the Secretary shall establish a schedule of fees, in lieu of royalties for geothermal resources, that a lessee or its affiliate—

(A) uses for a purpose other than the commercial generation of electricity; and

(B) does not sell.

**(2) Schedule of fees**

The schedule of fees—

(A) may be based on the quantity or thermal content, or both, of geothermal resources used;

(B) shall ensure a fair return to the United States for use of the resource; and

(C) shall encourage development of the resource.

**(3) State, tribal, or local governments**

If a State, tribal, or local government is the lessee and uses geothermal resources without sale and for public purposes other than commercial generation of electricity, the Secretary shall charge only a nominal fee for use of the resource.

<sup>1</sup> So in original. The semicolon probably should be a period.

**(4) Final regulation**

In issuing any final regulation establishing a schedule of fees under this subsection, the Secretary shall seek—

- (A) to provide lessees with a simplified administrative system;
- (B) to facilitate development of direct use of geothermal resources; and
- (C) to contribute to sustainable economic development opportunities in the area.

**(c) Final regulation establishing royalty rates**

In issuing any final regulation establishing royalty rates under this section, the Secretary shall seek—

- (1) to provide lessees a simplified administrative system;
- (2) to encourage new development; and
- (3) to achieve the same level of royalty revenues over a 10-year period as the regulation in effect on August 8, 2005.

**(d) Credits for in-kind payments of electricity**

The Secretary may provide to a lessee a credit against royalties owed under this chapter, in an amount equal to the value of electricity provided under contract to a State or county government that is entitled to a portion of such royalties under section 1019 of this title, section 35 of the Mineral Leasing Act (30 U.S.C. 191), except as otherwise provided by this section, or section 355 of this title, if—

- (1) the Secretary has approved in advance the contract between the lessee and the State or county government for such in-kind payments;
- (2) the contract establishes a specific methodology to determine the value of such credits; and
- (3) the maximum credit will be equal to the royalty value owed to the State or county that is a party to the contract and the electricity received will serve as the royalty payment from the Federal Government to that entity.

**(e) Crediting of rental toward royalty**

Any annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.

**(f) Advanced royalties required for cessation of production****(1) In general**

Subject to paragraphs (2) and (3), if, at any time after commercial production under a lease is achieved, production ceases for any reason, the lease shall remain in full force and effect for a period of not more than an aggregate number of 10 years beginning on the date production ceases, if, during the period in which production is ceased, the lessee pays royalties in advance at the monthly average rate at which the royalty was paid during the period of production.

**(2) Reduction**

The amount of any production royalty paid for any year shall be reduced (but not below 0)

by the amount of any advanced royalties paid under the lease to the extent that the advance royalties have not been used to reduce production royalties for a prior year.

**(3) Exceptions**

Paragraph (1) shall not apply if the cessation in production is required or otherwise caused by—

- (A) the Secretary;
- (B) the Secretary of the Air Force;
- (C) the Secretary of the Army;
- (D) the Secretary of the Navy;
- (E) a State or a political subdivision of a State; or
- (F) a force majeure.

**(g) Termination of lease for failure to pay rental****(1) In general**

The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this chapter and the terms of the lease under which the rental is required, on the expiration of the 45-day period beginning on the date of the failure to pay the rental.

**(2) Notification**

The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the period referred to in paragraph (1).

**(3) Reinstatement**

A lease that would otherwise terminate under paragraph (1) shall not terminate under that paragraph if the lessee pays to the Secretary, before the end of the period referred to in paragraph (1), the amount of rental due plus a late fee equal to 10 percent of the amount.

(Pub. L. 91-581, § 5, Dec. 24, 1970, 84 Stat. 1567; Pub. L. 109-58, title II, §§ 223(a), 224(a), 228, 230, 232, 233, 236(7), Aug. 8, 2005, 119 Stat. 661, 662, 667-670, 672.)

## REFERENCES IN TEXT

The Mineral Leasing Act, referred to in subsec. (a)(2), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

## AMENDMENTS

2005—Pub. L. 109-58, §§ 223(a)(1)-(3), 224(a)(1), 228, 230(1)-(3), 233(a), 236(7), inserted section catchline, designated existing provisions as subsec. (a) and inserted heading, redesignated subpars. (1) and (2) of par. (c) as subpars. (A) and (B), respectively, redesignated pars. (a) to (d) as pars. (1) to (4), respectively, of subsec. (a), added new pars. (1) to (3) of subsec. (a) and struck out former pars. (1) to (4) of subsec. (a) which related to royalties for amount or value of steam or other form of heat energy, royalty for value of byproducts, payment of annual rental, and royalties in lieu of rentals.

Subsec. (b). Pub. L. 109-58, § 223(a)(4), added subsec. (b).

Subsecs. (c), (d). Pub. L. 109-58, § 224(a)(2), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 109-58, § 230(4), added subsec. (e).

Subsec. (f). Pub. L. 109-58, § 232, added subsec. (f).

Subsec. (g). Pub. L. 109-58, § 233(b), added subsec. (g).

## EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title II, § 223(c), Aug. 8, 2005, 119 Stat. 662, provided that: "The schedule of fees established

under the amendment made by subsection (a)(4) [amending this section] shall apply with respect to payments under a lease converted under this subsection that are due and owing, and have been paid, on or after July 16, 2003. This subsection shall not require the refund of royalties paid to a State under section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) prior to the date of enactment of this Act [Aug. 8, 2005].”

#### INCENTIVES AND ROYALTIES FOR EXISTING LEASES

Pub. L. 109-58, title II, §224(c)–(e), Aug. 8, 2005, 119 Stat. 663, 664, provided that:

#### “(c) NEAR-TERM PRODUCTION INCENTIVE FOR EXISTING LEASES.—

“(1) IN GENERAL.—Notwithstanding section 5(a) of the Geothermal Steam Act of 1970 [30 U.S.C. 1004(a)], the royalty required to be paid shall be 50 percent of the amount of the royalty otherwise required, on any lease issued before the date of enactment of this Act [Aug. 8, 2005] that does not convert to new royalty terms under subsection (e)—

“(A) with respect to commercial production of energy from a facility that begins such production in the 6-year period beginning on the date of enactment of this Act; or

“(B) on qualified expansion geothermal energy.

“(2) 4-YEAR APPLICATION.—Paragraph (1) applies only to new commercial production of energy from a facility in the first 4 years of such production.

“(d) DEFINITION OF QUALIFIED EXPANSION GEOTHERMAL ENERGY.—In this section [amending this section and section 1019 of this title and enacting provisions set out as a note under this section], the term ‘qualified expansion geothermal energy’ means geothermal energy produced from a generation facility for which—

“(1) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of enactment of this Act [Aug. 8, 2005]; and

“(2) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility (as such average is adjusted to reflect any trend in changes in production during that period).

#### “(e) ROYALTY UNDER EXISTING LEASES.—

“(1) IN GENERAL.—Any lessee under a lease issued under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) before the date of enactment of this Act [Aug. 8, 2005] may, within the time period specified in paragraph (2), submit to the Secretary of the Interior a request to modify the terms of the lease relating to payment of royalties to provide—

“(A) in the case of a lease that meets the requirements of subsection (b) of section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by section 223), that royalties be based on the schedule of fees established under that section; and

“(B) in the case of any other lease, that royalties be computed on a percentage of the gross proceeds from the sale of electricity, at a royalty rate that is expected to yield total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease before the date of enactment of this subsection.

“(2) TIMING.—A request for a modification under paragraph (1) shall be submitted to the Secretary of the Interior by the date that is not later than—

“(A) in the case of a lease for direct use, 18 months after the effective date of the schedule of fees established by the Secretary of the Interior under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

“(B) in the case of any other lease, 18 months after the effective date of the final regulation issued under subsection (a) [amending this section].

“(3) APPLICATION OF MODIFICATION.—If the lessee requests modification of a lease under paragraph (1)—

“(A) the Secretary of the Interior shall, within 180 days after the receipt of the request for modification, modify the lease to comply with—

“(i) in the case of a lease for direct use, the schedule of fees established by the Secretary under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

“(ii) in the case of any other lease, the royalty for the lease established under paragraph (1)(B); and

“(B) the modification shall apply to any use of geothermal resources to which subsection (a) [amending this section] applies that occurs after the date of the modification.

“(4) CONSULTATION.—The Secretary of the Interior shall consult with the State and local governments affected by any proposed changes in lease royalty terms under this subsection.”

## § 1005. Lease term and work commitment requirements

### (a) In general

#### (1) Primary term

A geothermal lease shall be for a primary term of 10 years.

#### (2) Initial extension

The Secretary shall extend the primary term of a geothermal lease for 5 years if, for each year after the 10th year of the lease—

(A) the Secretary determined under subsection (b) that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

(B) the lessee paid in annual payments accordance with subsection (c).

#### (3) Additional extension

The Secretary shall extend the primary term of a geothermal lease (after an initial extension under paragraph (2)) for an additional 5 years if, for each year of the initial extension under paragraph (2), the Secretary determined under subsection (b) that the lessee satisfied the minimum work requirements that applied to the lease for that year.

### (b) Requirement to satisfy annual minimum work requirement

#### (1) In general

The lessee for a geothermal lease shall, for each year after the 10th year of the lease, satisfy minimum work requirements prescribed by the Secretary that apply to the lease for that year.

#### (2) Prescription of minimum work requirements

The Secretary shall issue regulations prescribing minimum work requirements for geothermal leases, that—

(A) establish a geothermal potential; and

(B) if a geothermal potential has been established, confirm the existence of producible geothermal resources.

### (c) Payments in lieu of minimum work requirements

In lieu of the minimum work requirements set forth in subsection (b)(2), the Secretary shall by regulation establish minimum annual payments which may be made by the lessee for a limited number of years that the Secretary determines will not impair achieving diligent development of the geothermal resource, but in no event shall the number of years exceed the duration of the extension period provided in subsection (a).