

## SUBCHAPTER I—ENERGY AND MINERALS

### PART 200—TERMS AND CONDITIONS: COAL LEASES

Sec.

200.1—200.10 [Reserved]

200.11 Incorporation of coal lease terms and conditions.

200.12 Contract term incorporation.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), as amended.

SOURCE: 54 FR 22188, May 22, 1989, unless otherwise noted.

#### §§ 200.1—200.10 [Reserved]

#### § 200.11 Incorporation of coal lease terms and conditions.

(a) All leases of coal on Indian lands, as defined in §216.101 of this chapter, issued by the Secretary, will include at the time of issuance, renewal, renegotiation, or readjustment, as applicable, the following provision:

The Lessee shall comply with all applicable requirements of the Surface Mining Control and Reclamation Act of 1977, and all regulations promulgated thereunder, including those codified at 30 CFR part 750.

(b) With respect to leases of coal on Indian lands issued by the Secretary after August 3, 1977, the Secretary shall, at the time of issuance, renewal, renegotiation, or readjustment, as applicable, include and enforce in such leases, terms and conditions related to the Surface Mining Control and Reclamation Act of 1977, as requested by the lessor Indian tribe in writing.

#### § 200.12 Contract term incorporation.

The requirements of 30 CFR part 750 shall be incorporated in all existing and new contracts entered into for coal mining on Indian lands.

[59 FR 43419, Aug. 23, 1994]

### PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

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AUTHORITY: Sec. 4, Act of May 11, 1938, (52 Stat. 347); Act of August 1, 1956 (70 Stat. 774); 25 U.S.C. 396a-g; and 25 U.S.C. 2 and 9.

SOURCE: 61 FR 35653, July 8, 1996, unless otherwise noted.

### Subpart A—General

#### §211.1 Purpose and scope.

(a) The regulations in this part govern leases and permits for the development of Indian tribal oil and gas, geothermal, and solid mineral resources except as provided under paragraph (e) of this section. These regulations are applicable to lands or interests in lands the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§211.4, 211.5, and 211.6 are supplemental to the regulations in this part, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(d) Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR

parts 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

#### §211.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

#### §211.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

*Applicant* means any person seeking a permit, lease, or an assignment from the superintendent or area director.

*Approving official* means the Bureau of Indians Affairs official with delegated authority to approve a lease or permit.

*Area director* means the Bureau of Indian Affairs official in charge of an area office.

*Authorized officer* means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described in this part and in 43 CFR parts 3160, 3180, 3260, 3280, 3480 and 3590.

*Cooperative agreement* means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

*Director's representative* means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

*Gas* means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

*Geological and geophysical permit* means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

*Geothermal resources means:*

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

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

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

(4) Any by-product derived therefrom.

*In the best interest of the Indian mineral owner* refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is “in the best interest of the Indian mineral owner” to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

*Indian lands* means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns land or interests in the land, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

*Indian mineral owner* means an Indian tribe, band, nation, pueblo community, rancheria, colony, or other tribal group which owns mineral interests in oil and gas, geothermal or solid mineral resources, title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

*Indian surface owner* means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

*Lease* means any contract approved by the United States under the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorizes

exploration for, extraction of, or removal of any minerals.

*Lessee* means a natural person, proprietorship, partnership, corporation, or other entity that has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

*Lessor* means an Indian mineral owner who is a party to a lease.

*Minerals* includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

*Minerals Management Service official* means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

*Mining* means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; Provided, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered “mining” only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

*Oil* means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

*Permit* means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

*Permittee* means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards

per year of common varieties of minerals from Indian lands.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Solid minerals* means all minerals excluding oil, gas and geothermal resources.

*Superintendent* means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

**§211.4 Authority and responsibility of the Bureau of Land Management (BLM).**

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations; and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, apply to leases and permits approved under this part.

**§211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).**

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases approved under this part.

**§211.6 Authority and responsibility of the Minerals Management Service (MMS).**

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which, apply to leases approved

under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

**§211.7 Environmental studies.**

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ), found in 40 CFR parts 1500 through 1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), The American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 through 1975 Comp., p. 559). If these surveys indicate that a mineral development will have an adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or;

(3) Ensure that appropriate excavations or other related research is conducted and ensure that complete data describing the historic property is preserved.

**§211.8 Government employees cannot acquire leases.**

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

**§211.9 Existing permits or leases for minerals issued pursuant to 43 CFR chapter II and acquired for Indian tribes.**

(a) Title to the minerals underlying certain Federal lands, which were previously subject to general leasing and mining laws, is now held in trust by the United States for Indian tribes. Existing mineral prospecting permits, exploration and mining leases on these lands, issued prior to these lands being placed in trust status or becoming Indian lands, pursuant to 43 CFR chapter II (and its predecessor regulations), and all actions on the permits and leases shall be administered by the Secretary in accordance with the regulations set forth in 30 CFR chapters II and VII and 43 CFR chapter II, as applicable, provided, that all payment or reports required by a non-producing lease or permit, issued pursuant to 43 CFR chapter II, shall be made to the superintendent having administrative jurisdiction over the land involved, instead of the officer of the Bureau of Land Management designated in 43 CFR unless specifically stated otherwise in the statutes authorizing the United States to hold the land in trust for an Indian tribe. Producing lease payments and reports will be submitted to the Minerals Management Service in accordance with 30 CFR chapter II, subchapters A and C.

(b) Administrative actions regarding an existing lease or permit under this section, may be appealed pursuant to 25 CFR part 2.

**Subpart B—How to Acquire Leases**

**§211.20 Leasing procedures.**

(a) Indian mineral owners may, with the approval of the superintendent or area director, lease their land for mining purposes. No oil and gas lease shall be approved unless it has first been offered for bidding at an advertised lease sale in accordance with this section. Leases for minerals other than oil and gas shall be advertised for bids as prescribed in this section unless the Secretary grants the Indian mineral owners written permission to negotiate for lease. Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request that the Secretary prepare and advertise or negotiate (if the requirements of this section have been met) mineral leases on their behalf. If requested by an applicant interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner, and advise the owner in writing of the alternatives available, including the right to decline to lease. If the Indian mineral owner decides to have the leases advertised, the Secretary shall consult with the Indian mineral owner concerning the appropriate royalty rate and rental. The Secretary may then undertake the responsibility to advertise and lease in accordance with the following procedures:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements of lease sales should send their mailing information to the appropriate superintendent or area director for future reference.

(2) The advertisement shall offer the tracts to the responsible bidder offering the highest bonus. The Secretary, after consultation with the Indian mineral owner, shall establish the rental and royalty rates which shall be stated in the advertisement and shall not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by the Indian mineral owner is required.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for the approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the lease for sale, or, subject to the consent of the Indian mineral owner, the lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained.

(d) The Indian mineral owner may also submit negotiated leases to the Secretary for review and approval.

**§ 211.21 [Reserved]**

**§ 211.22 Leases for subsurface storage of oil or gas.**

(a) The Secretary, with the consent of the Indian mineral owners, may approve storage leases, or modifications, amendments, or extensions of existing leases, on Indian lands to provide for the subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage lease, or modification, amendment, or extension to an existing lease, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary, with consent of the Indian mineral owners, may approve a provision in an oil and gas lease under which storage of oil and gas is authorized, for continuance of the lease at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the authorized officer and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

**§ 211.23 Corporate qualifications and requests for information.**

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, mineral leases, or assignments, bonds, or other instruments required by the regulations in this part constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a

surety shall furnish a power of attorney.

(b) A corporate applicant proposing to acquire an interest in a permit or lease shall have on file with the superintendent or area director a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated; and

(2) A notarized statement that the corporation has power to conduct all business and operations as described in the lease or permit.

(c) The Secretary may, either before or after the approval of a permit, mineral lease, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

**§ 211.24 Bonds.**

(a) The lessee, permittee or prospective lessee acquiring a lease, or any interest therein, by assignment shall furnish with each lease, permit or assignment a surety bond or personal bond in an amount sufficient to ensure compliance with all of the terms and conditions of the lease(s), permit(s), or assignment(s) and the statutes and regulations applicable to the lease, permit, or assignment. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a \$75,000 bond for all geothermal, mining, or oil and gas leases, permits, or assignments in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds are subject to approval in the discretion of the Secretary.

(c) An operator may file a \$150,000 bond for full nationwide coverage to cover all geothermal or oil and gas leases, permits, or assignments without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds are subject to approval in the discretion of the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the lease or permit. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a lease or permit; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose deposits are federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a lease or permit.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs upon demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the lease or permit provisions and conditions or failure to file a replacement in accordance with paragraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

(iv) The letter of credit shall contain a provision for automatic renewal for periods of not less than one (1) year in the absence of notice to the proper Bureau of Indian Affairs office at least ninety (90) days prior to the originally stated or any extended expiration date.

(v) A letter of credit used as security for any lease or permit upon which operations have taken place and final approval for abandonment has not been given, or as security for a statewide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of bonds may be increased in any particular case at the discretion of the Secretary.

**§211.25 Acreage limitation.**

A lessee may acquire more than one lease but no single lease shall be granted for mineral leasing purposes on Indian tribal or restricted lands in excess of the following acreage except where the rule of approximation applies:

(a) Leases for oil and gas and all other minerals except coal are to be contained within one United States Governmental survey section of land and shall be described by legal subdivisions including lots or tract equivalents not to exceed 640 acres; in instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof;

(b) Leases for coal shall ordinarily be limited to 2,560 acres in a reasonably compact form and shall be described by legal subdivisions including lots or tract equivalents. In instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof. The Secretary may, upon application and with the consent of the Indian mineral owner, approve the issuance of a single lease for more than 2,560 acres, in a reasonably compact form, upon a finding that the issuance is in the best interest of the lessor.

**§211.26 [Reserved]**

**§211.27 Duration of leases.**

(a) All leases shall be for a term not to exceed a primary term of lease duration of ten (10) years and, absent specific lease provisions to the contrary,

shall continue as long thereafter as the minerals specified in the lease are produced in paying quantities. Absent specific lease provisions to the contrary, all provisions in leases governing their duration shall be measured from the date of approval by the Secretary.

(b) An oil and gas or geothermal resource lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration ("commencement clause") if drilling operations have commenced during the primary term, shall be valid and shall hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has commenced actual drilling by midnight of the last day of the primary term of the lease with a drilling rig designed to reach the total proposed depth, and drilling is continued with reasonable diligence until the well is completed to production or abandoned. However, in no case shall such drilling hold the lease longer than 120 days past the primary term of lease duration without actual production of oil, gas, or geothermal resources. *Provided*, that this extension does not allow a lease to continue past the 10-year statutory limitation. Drilling which meets the requirements of this section and occurs within a unit or communitization agreement to which the lease is committed shall be considered as if it occurs on the leasehold itself. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

(c) A solid minerals lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration if mining operations have commenced during the primary term (commencement clause), shall be valid and hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has by midnight of the last day of the primary term of the lease commenced actual removal of mineral materials intended for sale and upon which royalties will be paid. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

**§211.28 Unitization and communitization agreements, and well spacing.**

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease. However, the Secretary shall consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or well spacing plan.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

**§211.29 Exemption of leases and permits made by organized tribes.**

The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362,258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501–509), or by ordinance, resolution, or other action authorized under such constitution, bylaw or charter; Provided, that such tribal law may not supersede the requirements of Federal statutes applicable to Indian mineral leases. The regulations in this part, in so far as they are not so superseded, shall apply to leases and permits made by organized tribes if the validity of the lease or permit depends upon the approval of the Secretary of the Interior.

**Subpart C—Rents, Royalties, Cancellations and Appeals**

**§211.40 Manner of payments.**

Unless otherwise specifically provided for in a lease, once production has been established, all payments shall be made to the MMS or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the superintendent or area director.

**§211.41 Rentals and production royalty on oil and gas leases.**

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of \$2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than  $16\frac{2}{3}$  percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and by the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

(d) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

**§211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.**

(a) Unless otherwise authorized by the Secretary, a lease for minerals other than oil, gas and geothermal resources shall provide for a yearly development expenditure of not less than \$20 per acre. All such leases shall provide for a rental payment of not less

than \$2.00 for each acre or fraction of an acre payable on or before the first day of each lease year.

(b) Within twenty (20) days after the lease year, an itemized statement, in duplicate, of the expenditure for development under a lease for minerals other than oil and gas shall be filed with the superintendent or area director. The lessee must certify the statement under oath.

**§211.43 Royalty rates for minerals other than oil and gas.**

(a) Except as provided in paragraph (b) of this section, the minimum rates for leases of minerals other than oil and gas shall be as follows:

(1) For substances other than coal, the royalty rate shall be 10 percent of the value of production produced and sold from the lease at the nearest shipping point.

(2) For coal to be strip or open pit mined the royalty rate shall be  $12\frac{1}{2}$  percent of the value of production produced and sold from the lease, and for coal removed from an underground mine, the royalty rate shall be 8 percent of the value of production produced and sold from the lease.

(3) For geothermal resources, the royalty rate shall be 10 percent of the amount or value of steam, or any other form of heat or energy derived from production of geothermal resources under the lease and sold or utilized by the lessee. In addition, the royalty rate shall be 5 percent of the value of any byproduct derived from production of geothermal resources under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that the royalty for any mineral byproduct shall be governed by the appropriate paragraph of this section.

(b) A lower royalty rate shall be allowed if it is determined to be in the best interest of the Indian mineral owner. Approval of a lower rate may only be granted by the area director if the approving official is the superintendent or by the Assistant Secretary for Indian Affairs, if the approving official is the area director.

**§ 211.44 Suspension of operations.**

(a) After the expiration of the primary term of the lease the Secretary may approve suspension of operations for remedial purposes which are necessary for continued production, to protect the resource, the environment, or for other good reasons. *Provided*, that such remedial operations are conducted in accordance with 43 CFR part 3160, subpart 3165 and under such stipulations and conditions as may be prescribed by the Secretary and are conducted with reasonable diligence. Any suspension shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(b) An application for permission to suspend operations or production for economic or marketing reasons on a lease capable of production after the expiration of the primary term of lease duration must be accompanied by the written consent of the Indian mineral owner, an economic analysis, and an executed amendment by the parties to the lease setting forth the provisions pertaining to the suspension of operations and production. Such application shall be treated as a negotiated change to lease provisions, and as such, shall be subject to review and approval by the Secretary.

**§ 211.45 [Reserved]****§ 211.46 Inspection of premises, books and accounts.**

Lessees shall allow the Indian mineral owner, the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purpose of inspection and audit. Lessees shall keep a full and correct account of all operations and submit all related reports required by the lease and applicable regulations. Books and records shall be available for inspection during regular business hours.

**§ 211.47 Diligence, drainage and prevention of waste.**

The lessee shall:

(a) Exercise diligence in mining, drilling and operating wells on the leased lands while minerals production can be secured in paying quantities;

(b) Protect the lease from drainage (if oil and gas or geothermal resources are being drained from the lease premises by a well or wells located on lands not included in the lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions to protect the interest of the Indian mineral owner of the lands, such as payment of compensatory royalty for the drainage);

(c) Carry on operations in a good and workmanlike manner in accordance with approved methods and practices;

(d) Have due regard for the prevention of waste of oil or gas or other minerals, the entrance of water through wells drilled by the lessee to other strata, to the destruction or injury of the oil or gas, other mineral deposits, or fresh water aquifers, the preservation and conservation of the property for future productive operations, and the health and safety of workmen and employees;

(e) Securely plug all wells and effectively shut off all water from the oil or gas-bearing strata before abandoning them;

(f) Not construct any well pad location within 200 feet of any structures or improvements without the Indian surface owner's written consent;

(g) Carry out, at the lessee's expense, all reasonable orders and requirements of the authorized officer relative to prevention of waste;

(h) Bury all pipelines crossing tillable lands below plow depth unless other arrangements are made with the Indian surface owner; and

(i) Pay the Indian surface owner all damages, including damages to crops, buildings, and other improvements of the Indian surface owner occasioned by the lessee's operations as determined by the superintendent.

**§ 211.48 Permission to start operations.**

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of a mineral lease or permit pursuant to the regulations in this part.

(b) After a lease or permit is approved, written permission must be secured from the Secretary before any

operations are started on the leased premises, in accordance with applicable rules and regulations in 25 CFR part 216; 30 CFR chapter II, subchapters A and C; 30 CFR part 750 (Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands), 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTLs) issued thereunder.

**§211.49 Restrictions on operations.**

Leases issued under the provisions of the regulations in this part shall be subject to such restrictions as to time or times for well operations and production from any leased premises as the Secretary judges may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor.

**§211.50 [Reserved]**

**§211.51 Surrender of leases.**

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) All royalties and rentals due on the date the request for surrender is received must be paid;

(b) The superintendent, after consultation with the authorized officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all operations on the portion of the lease surrendered have been properly reclaimed, abandoned, or conditioned, as required;

(c) If a lease has been recorded, the lessee must submit a release along with the recording information of the original lease so that, after acceptance of the release, it may be recorded;

(d) If a lessee requests to surrender an entire lease or an entire undivided portion of a lease document, the lessee must deliver to the superintendent or area director the original lease documents; *Provided*, that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must deliver to the superintendent or area director only its copy of the assignment;

(e) If the lease (or a portion thereof being surrendered) is owned in undivided interests, all lessees owning undi-

vided interests in the lease must join in the request for surrender;

(f) No part of any advance rental shall be refunded to the lessee, nor shall any subsequent surrender or termination of a lease relieve the lessee of the obligation to pay advance rental if advance rental became due prior to the date the request for surrender was received by the superintendent or area director;

(g) If oil, gas, or geothermal resources are being drained from the leased premises by a well or wells located on lands not included in the lease, the Secretary reserves the right, prior to acceptance of the surrender, to impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owners of the lands surrendered. Such terms and conditions may include payment of compensatory royalty for any drainage; and

(h) Upon expiration or surrender of a solid mineral lease the lessee shall deliver the leased premises in a condition conforming to the approved reclamation plan. Unless otherwise provided in the lease, the machinery necessary to operate the mine is the property of the lessee. However, the machinery may not be removed from the leased premises without the written permission of the Secretary.

**§211.52 Fees.**

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment, thereof shall be accompanied by a filing fee of \$75.00 at the time of filing.

**§211.53 Assignments, overriding royalties, and operating agreements.**

(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease. If consent is not required, then the Secretary shall notify the Indian mineral owner of the proposed assignment. To obtain the approval of the Secretary the assignee must be qualified to hold the lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the

faithful performance of the covenants and conditions of the lease.

(b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary.

(c) Assignments of leases, and stipulations modifying the provisions of existing leases, which stipulations are also subject to the approval of the Secretary, shall be filed with the superintendent within five (5) working days after the date of execution. Upon execution of satisfactory bonds by the assignee the Secretary may permit the release of any bonds executed by the assignor. Upon execution of satisfactory bonds the assignee accepts all the assignor's responsibilities and prior obligations and liabilities of the assignor (including but not limited to any underpaid royalties and rentals) under the lease.

(d) Agreements creating overriding royalties or payments out of production shall not be considered as interests in the leases as such provision is used in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in such agreements shall be construed as modifying any of the obligations of the lessee, including, but not limited to, obligations imposed by requirements of the MMS for reporting, accounting, and auditing; obligations for diligent development and operation, protection against drainage and mining in trespass, compliance with oil and gas, geothermal, and mining regulations (25 CFR part 216; 43 CFR parts 3160, 3260, 3480, and 3590; and those applicable rules found in 30 CFR chapter II, subchapters A and C) and the requirements for Secretarial approval before abandonment of any oil and gas or geothermal well or mining operation. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. The existence of agreements creating overriding royalties or pay-

ments out of production, whether or not actually paid, shall not be considered as justification for the approval of abandonment of any oil and gas or geothermal well or mining operation. Nothing in this paragraph revokes the requirement for approval of assignments and other instruments which is required in this section, but any overriding royalties or payments out of production created by the provisions of such assignments or instruments shall be subject to the condition stated in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent unless incorporated in assignments or instruments required to be filed pursuant to this section.

**§ 211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.**

(a) If the Secretary determines that a permittee or lessee has failed to comply with the terms of the permit or lease; the regulations in this part; or other applicable laws or regulations; the Secretary may:

(1) Serve a notice of noncompliance specifying in what respect the permittee or lessee has failed to comply with the requirements referenced in this paragraph, and specifying what actions, if any, must be taken to correct the noncompliance; or

(2) Serve a notice of proposed cancellation of the lease or permit. The notice of proposed cancellation shall set forth the reasons why lease or permit cancellation is proposed and shall specify what actions, if any, must be taken to avoid cancellation.

(b) The notice of noncompliance or proposed cancellation shall specify in what respect the permittee or lessee has failed to comply with the requirements referenced in paragraph (a), and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice shall be served upon the permittee or lessee by delivery in person or by certified mail to the permittee or lessee at the permittee's or lessee's last known address. When certified mail is used, the date of service shall be deemed to be when the notice is received or five (5) working days

after the date it is mailed, whichever is earlier.

(d) The lessee or permittee shall have thirty (30) days (or such longer time as specified in the notice) from the date that the notice is served to respond, in writing, to the official or the Bureau of Indian Affairs office that issued the notice.

(e) If a permittee or lessee fails to take any action that is prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the permittee's or lessee's actions, then the Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(f) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying the permittee's or lessee's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation of operations. If the permittee or lessee fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (h), the Secretary may issue an order of lease or permit cancellation.

(g) Cancellation of a lease or permit shall not relieve the lessee or permittee of any continuing obligations under the lease or permit.

(h) Orders of cessation or of lease or permit cancellation issued pursuant to this section may be appealed under 25 CFR part 2.

(i) This section does not limit any other remedies of the Indian mineral owner as set forth in the lease or permit.

(j) Nothing in this section is intended to limit the authority of the authorized officer or the MMS official to take any enforcement action authorized pursuant to statute or regulation.

(k) The authorized officer, MMS official, and the superintendent and/or area director should consult with one another before taking any enforcement actions.

#### **§211.55 Penalties.**

(a) In addition to or in lieu of cancellation under §211.54, violations of

the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary, or, in the case of solid minerals the authorized officer, may subject a lessee or permittee to a penalty of not more than \$1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the lessee or permittee either personally or by certified mail to the lessee or permittee at the lessee's or permittee's last known address. The date of service by certified mail shall be deemed to be the date when received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the lessee or permittee of the lessee's or permittee's right to either request a hearing within thirty (30) days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the superintendent and/or area director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the lessee or permittee served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits prescribed for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment in full of penalties more than ten (10) days after a final decision imposing a penalty shall subject the

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lessee or permittee to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under §6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the authorized officer, the director's representative or the MMS official to impose penalties for violations of applicable regulations pursuant to 43 CFR part 3160, and 43 CFR Groups 3400 and 3500, 30 CFR part 750, or 30 CFR chapter II, subchapters A and C;

(2) Replacing or superseding any penalty provision in the terms and conditions of a lease or permit approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of lease or permit terms for which the authorized officer, director's representative or MMS official, have either statutory or regulatory authority to assess a penalty.

**§211.56 Geological and geophysical permits.**

Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral leases entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian mineral owner under the following conditions:

(a) The permit must describe the area to be explored, the duration, and the consideration to be paid the Indian owner;

(b) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of, or removal of oil and gas, geothermal resources, or other minerals, except samples for assay and experimental

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purposes, unless specifically so stated in the permit; and

(c) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information after six (6) years, with the consent of the Indian mineral owner.

**§211.57 Forms.**

Leases, bonds, permits, assignments, and other instruments relating to mineral leasing shall be on forms, prescribed by the Secretary, that may be obtained from the superintendent or area director. The provisions of a standard lease or permit may be changed, deleted, or added to by written agreement of all parties with the approval of the Secretary.

**§211.58 Appeals.**

Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to 25 CFR part 2.

**PART 212—LEASING OF ALLOTTED LANDS FOR MINERAL DEVELOPMENT**

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- 212.57 Forms.
- 212.58 Appeals.

AUTHORITY: Act of March 3, 1909, (35 Stat. 783; 25 U.S.C. 396 (as amended)); Act of May 11, 1938, (Sec. 2, 52 Stat. 347; 25 U.S.C. 396 b-g; Act of August 1, 1956, (70 Stat. 774)); and 25 U.S.C. 2 and 9.

SOURCE: 61 FR 35661, July 8, 1996, unless otherwise noted.

### Subpart A—General

#### § 212.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of individual Indian oil and gas, geothermal and solid mineral resources. These regulations are applicable to lands or interests in lands the title to which is held, for any individual Indian, in trust

by the United States or is subject to restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(d) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 212.4, 212.5, and 212.6 of this part are supplemental to these regulations, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR part 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

#### § 212.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

#### § 212.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

*Applicant* means any person seeking a permit, lease, or an assignment from the superintendent or area director.

*Approving official* means the Bureau of Indian Affairs official with delegated authority to approve a lease or permit.

*Area director* means the Bureau of Indian Affairs official in charge of an area office.

*Authorized officer* means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3180, 3260, 3280, 3480, and 3590.

*Cooperative agreement* means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

*Director's representative* means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

*Gas* means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

*Geological and geophysical permit* means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

*Geothermal resources* means:

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

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

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

(4) Any by-product derived therefrom.

*In the best interest of the Indian mineral owner* refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain ac-

tion (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

*Indian lands* means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

*Indian mineral owner* means any individual Indian or Alaska Native who owns mineral interests in oil and gas, geothermal, or solid mineral resources, title to which is held in trust by the United States, or is subject to the restriction against alienation imposed by the United States.

*Indian surface owner* means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

*Lease* means any contract, approved by the Secretary of the Interior under the Act of March 3, 1909 (35 Stat. 783) (25 U.S.C. 396), as amended, and the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a-396g), as amended, that authorize exploration for, extraction of, or removal of any minerals.

*Lessee* means a natural person, proprietorship, partnership, corporation, or other entity which has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

*Lessor* means an Indian mineral owner who is a party to a lease.

*Minerals* includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil, gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay,

silt, or any other energy or non-energy mineral.

*Minerals Management Service official* means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

*Mining* means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; *Provided*, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

*Oil* means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

*Permit* means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

*Permittee* means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Solid minerals* means all minerals excluding oil and gas and geothermal resources.

*Superintendent* means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

**§212.4 Authority and responsibility of the Bureau of Land Management (BLM).**

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. Those regulations, apply to leases or permits issued under this part.

**§212.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).**

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases issued under this part.

**§212.6 Authority and responsibility of the Minerals Management Service (MMS).**

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

**§ 212.7 Environmental studies.**

The provisions of § 211.7 of this subchapter, as amended, are applicable to leases under this part.

**§ 212.8 Government employees cannot acquire leases.**

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

**Subpart B—How to Acquire Leases****§ 212.20 Leasing procedures.**

(a) Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request the Secretary to prepare, advertise and negotiate mineral leases on their behalf. Leases for minerals shall be advertised for bids as prescribed in this section unless one or more of the Indian mineral owners of a tract sought for lease request the Secretary to negotiate for a lease on their behalf without advertising. Unless the Secretary decides that negotiation of a mineral lease is in the best interests of the Indian mineral owners, he shall use the following procedure for leasing:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements on lease sales should send their mailing infor-

mation to the appropriate agency or area office for future reference.

(2) The advertisement shall offer the tracts to a responsible bidder offering the highest bonus. The Secretary shall establish the rental and royalty rates which shall be stated in the advertisement and will not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required. The requirements under § 212.21 are applicable to the acceptance of a lease bid.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form, signed by the Indian mineral owner(s), at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for

approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the tract for sale, or subject to the consent of the Indian mineral owner, a lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained. The requirements under §212.21 are applicable to the approval of a mineral lease.

**§212.21 Execution of leases.**

(a) The Secretary shall not execute a mineral lease on behalf of an Indian mineral owner, except when such owner is deceased and the heirs to or devisee of the estate have not been determined, or if determined, some or all of them cannot be located. Leases involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under the provisions of section 212.20(b) (1) through (6).

(b) The Secretary may execute leases on behalf of minors and persons who are incompetent by reason of mental incapacity; *Provided*, that there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

(c) If an owner is a life tenant, the procedures set forth in 25 CFR part 179 (Life Estates and Future Interests), shall apply.

**§212.22 Leases for subsurface storage of oil or gas.**

The provisions of §211.22 of this subchapter are applicable to leases under this part.

**§212.23 Corporate qualifications and requests for information.**

The provisions of §211.23 of this subchapter are applicable to leases under this part.

**§212.24 Bonds.**

The provisions of §211.24 of this subchapter are applicable to leases under this part.

**§212.25 Acreage limitation.**

The provisions of §211.25 of this subchapter are applicable to leases under this part.

**§212.26 [Reserved]**

**§212.27 Duration of leases.**

The provisions of §211.27 of this subchapter are applicable to leases under this part.

**§212.28 Unitization and communitization agreements, and well spacing.**

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all

documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

**§ 212.29 [Reserved]**

**§ 212.30 Removal of restrictions.**

(a) Notwithstanding the provisions of any mineral lease to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the lease. Thereafter, all payments required to be made under the lease shall be made directly to the owner(s).

(b) In the event restrictions are removed from a part of the land included in any lease approved by the Secretary, the entire lease shall continue to be subject to the supervision of the Secretary until such times as the holder of the lease and the unrestricted Indian owner submits to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from the supervision of the Secretary, the lease, the regulations of this part, and all other applicable laws and regulations.

**§§ 212.31–212.32 [Reserved]**

**§ 212.33 Terms applying after relinquishment.**

All leases for individual Indian lands approved by the Secretary under this part shall contain provisions for the relinquishment of supervision and provide for operations of the lease after such relinquishment. These leases shall contain provisions that address the following issues:

(a) *Provisions of relinquishment.* If the Secretary relinquishes supervision at any time during the life of the lease instrument as to all or part of the acreage subject to the lease, the Secretary shall give the Indian mineral owner and the lessee thirty (30) days written notice prior to the termination of supervision. After notice of relinquishment has been given to the lessee, the lease shall be subject to the following conditions:

(1) All rentals and royalties there-after accruing shall be paid directly to the lessor or the lessor's successors in title, or to a trustee appointed under the provisions of paragraph (b) of this section.

(2) If, at the time supervision is relinquished by the Secretary, the lessee has made all payments then due and has fully performed all obligations on the lessee's part to be performed up to the time of such relinquishment, the bond given to secure the performance of the lease, on file in the appropriate agency or area office, shall be of no further force or effect.

(3) Should relinquishment affect only part of the lease, then the lessee may continue to conduct operations on the land covered by the lease as an entirety; *Provided*, that the lessee shall pay, in the manner prescribed by the lease and regulations for the benefit of lessor, the same proportion of all rentals and royalties due under the provisions of this part as the acreage retained under the supervision of the Secretary bears to the entire acreage of the lessee, and shall pay the remainder of the rentals and royalties directly to the remaining lessors or successors in title or said trustee as the case may be, as provided in paragraph (a) (1) of this section.

(b) *Division of fee.* If, after the execution of the lease and after the Secretary relinquishes supervision thereof, the fee of the leased land is divided into separate parcels held by different owners, or if the rental or royalty interest is divided in ownership, the obligations of the lessee shall not be modified in any manner except as specifically provided by the provisions of the lease. Notwithstanding such separate ownership, the lessee may continue to conduct operations on said premises as an entirety. Each separate owner shall receive such proportion of all rental and royalties accruing after the vesting of its title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental or royalty interest as the case may be. If at any time after departmental supervision of the lease is relinquished, in whole or in part, to rentals and royalties, whether said parties are so entitled by virtue of undivided interest or by virtue of ownership of separate parcels of the land covered, the lessee may elect to withhold the payment of further rentals or royalties (except as the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their said respective successors in title.

**§212.34 Individual tribal assignments excluded.**

The reference in this part to Indian mineral owners does not include assignments of tribal lands made pursuant to tribal constitutions or ordinances for the use of individual Indians and assignees of such lands.

**Subpart C—Rents, Royalties, Cancellations, and Appeals**

**§212.40 Manner of payments.**

The provisions of §211.40 of this subchapter are applicable to leases under this part.

**§212.41 Rentals and production royalty on oil and gas leases.**

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of \$2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16- $\frac{2}{3}$  percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

**§212.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.**

The provisions of §211.42 of this subchapter are applicable to leases under this part.

**§212.43 Royalty rates for minerals other than oil and gas.**

The provisions of §211.43 of this subchapter are applicable to leases under this part.

**§ 212.44 Suspension of operations.**

The provisions of § 211.44 of this subchapter are applicable to leases under this part.

**§ 212.45 [Reserved]****§ 212.46 Inspection of premises, books, and accounts.**

The provisions of § 211.46 of this subchapter are applicable to leases under this part.

**§ 212.47 Diligence, drainage and prevention of waste.**

The provisions of § 211.47 of this subchapter are applicable to leases under this part.

**§ 212.48 Permission to start operations.**

The provisions of § 211.48 of this subchapter are applicable to leases under this part.

**§ 212.49 Restrictions on operations.**

The provisions of § 211.49 of this subchapter are applicable to leases under this part.

**§ 212.50 [Reserved]****§ 212.51 Surrender of leases.**

The provisions of § 211.51 of this subchapter are applicable to leases under this part.

**§ 212.52 Fees.**

The provisions of § 211.52 of this subchapter are applicable to leases under this part.

**§ 212.53 Assignments, overriding royalties, and operating agreements.**

The provisions of § 211.53 of this subchapter are applicable to leases under this part.

**§ 212.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.**

The provisions of § 211.54 of this subchapter are applicable to leases under this part.

**§ 212.55 Penalties.**

The provisions of § 211.55 of this subchapter are applicable to this part.

**§ 212.56 Geological and geophysical permits.**

(a) Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral lease entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and the consideration to be paid the Indian owner;

(2) The permit may not grant the permittee any option or preference rights to a lease or other development contract, authorize the production of, or removal of oil and gas, or geothermal resources, or other minerals except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(3) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may, in the discretion of the Secretary, release such information after six (6) years.

(b) A permit may be granted by the Secretary without 100 percent consent of the individual mineral owners if:

(1) The minerals are owned by more than one person, and the owners of a majority of the interest therein consent to the permit;

(2) The whereabouts of one or more owners of the minerals or an interest therein is unknown, and all the remaining owners of the interests consent to the permit;

(3) The heirs or devisee of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no

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substantial injury to the land or any owner thereof.

(c) A lessee does not need a permit to conduct geological and geophysical operations on Indian lands, if provided for in the lessee's mineral lease, where the Indian mineral owner is also the surface land owner. In instances where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant.

§212.57 Forms.

The provisions of §211.57 of this subchapter are applicable to leases under this part.

§212.58 Appeals.

The provisions of §211.58 of this subchapter are applicable to leases under this part.

PART 213—LEASING OF RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

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AUTHORITY: Sec. 2, 35 Stat. 312, sec. 18, 41 Stat. 426, sec. 1, 45 Stat. 495, sec. 1, 47 Stat. 777; 25 U.S.C. 356. Interpret or apply secs. 3, 11, 35 Stat. 313, 316, sec. 8, 47 Stat. 779, unless otherwise noted.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR part 221.

SOURCE: 22 FR 10599, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§213.1 Definitions.

Area Director. The term "Area Director" in this part refers to the officer in charge of the Five Civilized Tribes Indian Agency.

*Supervisor.* The term “supervisor” in this part refers to a representative of the Secretary of the Interior under direction of the Director of the U.S. Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

#### HOW TO ACQUIRE LEASES

##### **§ 213.2 Applications for leases.**

Applications for leases should be made to the Area Director.

##### **§ 213.3 No Government employee shall acquire leases.**

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the U.S. Government, whether connected with the Bureau of Indian Affairs or otherwise, and no employee of the Department of the Interior shall be permitted to acquire any interest in such leases covering restricted Indian lands by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

##### **§ 213.4 Sale of oil and gas leases.**

(a) At such times and in such manner as he may deem appropriate, the Area Director shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Commissioner of Indian Affairs, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier’s check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year’s rental, and his share of the advertising costs, and shall file with the Area Director the lease in com-

pleted form. The Area Director may, for good and sufficient reasons, extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Indian lessor.

(b) In cases where any part of the bonus bid for a lease is paid directly to the Indian lessor, upon his signing the lease, the lessee must procure and file with the lease an affidavit of the lessor, sworn to before a U.S. Commissioner, Postmaster, Area Director, local representative of the Area Director, county or district judge, Federal judge or clerk of a Federal court, showing the amount of bonus so paid, and the balance thereof must be paid into the office of the Area Director upon filing the lease. Where possible lessees are requested to take the lessor to the nearest United States field clerk who will render all proper assistance in the execution of leases, and before whom the bonus affidavit may be executed in cases where any part of bonus consideration is paid directly to the lessor. Where leases are executed by guardians, under order of court, the affidavit of lessor may be executed before a notary public.

(c) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the Indian owners, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received

from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

(Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968, sec. 4, 52 Stat. 348; 25 U.S.C. 396d, 476, 477, 509)

**§213.5 Term of oil and gas leases.**

Oil and gas mining leases which require the approval of the Secretary of the Interior may be made for periods of 10 years from the date of approval of lease by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities.

**§213.6 Leases for minerals other than oil and gas.**

Uncontested mining leases for minerals other than oil and gas shall be made on forms<sup>1</sup> prescribed by the Department, for a period of 15 years with the right of renewal on such terms as the superintendent may prescribe, and shall be subject only to approval by the Area Director. See provisions of the act of February 14, 1920 (41 Stat. 408). Any persons aggrieved by any decision or order of the Area Director approving, rejecting, or disapproving any such lease may appeal from the same to the Secretary of the Interior within 30 days from the date of such decision or order.

**§213.7 Fees.**

The provisions of §211.25 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§213.8 Filing of lease deemed constructive notice.**

The filing of any lease in the office of the Area Director shall be deemed constructive notice of the existence of such lease. See act of March 1, 1907.

(34 Stat. 1026)

**§213.9 Noncontiguous tracts.**

No lease will be approved covering two or more noncontiguous tracts of

land, but in such case a lease must be executed on each separate tract.

**§213.10 Lessor's signature.**

Any Indian who cannot write his name will be required to sign all official papers by making a distinct thumbprint which shall be designated as "right" or "left" thumbmark. Such signatures must be witnessed by two persons, one of whom must be a U.S. Government employee (such as field clerk, postmaster, U.S. Commissioner, etc.).

**§213.11 Minor lessors.**

Where the lessor is a minor, certified copies of letters of guardianship and court orders approving leases must be filed.

**§213.12 Leases executed by guardians of minors.**

Leases executed by guardians of minors under order of court for a period extending beyond the minority of the minor will be approved unless it appears that such action would be prejudicial to the interests of the minor: *Provided*, That in the event the minor becomes of age within 1 year from the date of execution of lease the consent of the minor to the execution of the lease should be obtained and submitted with the lease for consideration.

**§213.13 Inherited lands.**

Except to prevent loss or waste, leases on undivided inherited lands will not be approved until the heirship determination has been approved. If the heirs to undivided inherited lands are undetermined or cannot be located, or if the heirs owning less than one-half interest in the lands refuse to sign a lease and it appears necessary to lease the lands to prevent loss or waste, the Area Director will report the facts to the Commissioner of Indian Affairs and ask for instructions. Minor heirs can lease or joint adult heirs in leasing only through guardians under order of court. Proof of heirship shall be given upon Form F prescribed. If probate or other court proceedings have established the heirship in any case, or the land has been partitioned, certified copy of final order, judgment, or decree

<sup>1</sup>For further information regarding forms, see §211.30.

of the court will be accepted in lieu of Form F.

**§213.14 Corporations and corporate information.**

If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the Area Director January 1 of each year, and at such other times as may be requested.

Whenever deemed advisable in any case the Area Director may require a corporation applicant or lessee to file:

(a) List of officers, principal stockholders, and directors, with post office addresses and numbers of shares held by each.

(b) A sworn statement of the proper officer showing:

(1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind of quantity and value of the same paid per share.

(2) Of the stock sold, how much remains unpaid and subject to assessment.

(3) The amount of cash the company has in its treasury and elsewhere.

(4) The property, exclusive of cash, owned by the company and its value.

(5) The total indebtedness of the company and the nature of its obligations.

(6) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations, or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the State, and whether they hold such interest for themselves or in trust.

CROSS REFERENCE: For regulations of the Securities and Exchange Commission, see 17 CFR chapter II.

**§213.15 Bonds.**

(a) Lessee shall furnish with each mining lease a bond (Form 5-154b), and an assignee of a lease shall furnish with each assignment a bond (Form 5-154m), with an acceptable company authorized to act as sole surety, or with two or more personal sureties and a deposit as collateral security of any public-debt obligations of the United States guaranteed as to principal and interest by the United States, equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership of unencumbered real estate of the value equal to twice the amount of the bonds. Lessee may file a bond on Form 5-154a without sureties and a deposit as collateral security of Government bonds equal in value to the full amount of the bond. Lease bonds, except as provided in paragraph (c) of this section, shall not be less than the following amounts:

For less than 80 acres .....	\$1,000
For 80 acres and less than 120 acres .....	1,500
For 120 acres and not more than 160 acres .....	2,000
For each additional 40 acres, or part thereof, above 160 acres.....	500

*Provided*, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That a lessee may file a bond (Form 5-154f), in the sum of \$15,000 for all leases of minerals up to 10,240 acres under the jurisdiction of the officer in charge of the Five Civilized Tribe Agency.

(b) In lieu of the bonds required under paragraph (a) of this section, a lessee may furnish a bond (Form 5-156) in the sum of \$75,000 for full nationwide coverage with an acceptable company authorized to act as sole surety to cover all oil and gas leases and oil and gas prospecting permits without geographic or acreage limitation to which the lessee or permittee is or may become a party.

(c) The right is specifically reserved to increase the amount of bonds and the collateral security prescribed in paragraph (a) of this section in any particular case when the officer in charge deems it proper to do so. The nationwide bond may be increased at any time in the discretion of the Secretary of the Interior.

[22 FR 10599, Dec. 24, 1957, as amended at 26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 213.16 Additional information may be requested by Area Director.**

The Area Director, or other Government officer having the matter in charge or under investigation, may, at any time, either before or after approval of a lease, call for any additional information desired to carry out the purpose of the regulations in this part, and such information shall be furnished within the time specified in the request therefor. If the lessee fails to furnish the information requested, the lease will be subject to disapproval or cancellation, whichever is appropriate.

**§ 213.17 Government reserves right to purchase minerals produced.**

In time of war or other public emergency any of the executive departments of the U.S. Government shall have the option to purchase at the prevailing market price on the date of sale all or any part of the minerals produced under any lease.

RENTS AND ROYALTIES

**§ 213.18 Manner of payment of rents and royalties.**

(a) Except as provided in paragraph (b) of this section, all rents, royalties and other payments due under leases which have been or may be approved in accordance with this part shall be paid

by check or bank draft to the order of the Treasurer of the United States and mailed to the Area Director for deposit to the credit of the various lessors. When lessees and purchasers are instructed, in writing, by the Area Director, which instructions shall be complete as to lessors for each lease, separate remittances for each payment due each lessor shall be mailed to the Area Director. Any payments under this paragraph, covering lands or interests therein from which restrictions have been removed by death or otherwise, may continue to be made in the manner provided by this paragraph until ten days after notice of relinquishment of supervision has been mailed to the lessee.

(b) The Area Director may, in his discretion, whenever it appears to be in the best interest of any lessor, authorize and direct the lessee to pay directly to the lessor, or to the legal guardian of any lessor under guardianship, the rents, royalties and other payments (other than bonuses and advance payments for the first year) due under leases which have been or may be approved in accordance with the regulations in this part. Any such authority for direct payment shall be in writing, addressed to the owner or owners of the lease, and shall expressly provide for its revocation or modification at any time, in writing, by the Area Director. Written authorization for direct payment and written revocations or modifications thereof shall become a part of the lease and shall be distributed as in the case of original leases. All such revocations or modifications shall have a 5-day grace period after date of receipt. Rents, royalties, and other payments paid in accordance therewith shall constitute full compliance with the requirements of the lease pertaining to such payments.

(c) Rents and royalties paid pursuant to paragraphs (a) and (b) of this section on producing leases shall be supported by statements, acceptable to the Secretary or his duly authorized representative, to be transmitted to the Supervisor, in duplicate, covering each lease, identified by contract number and lease number. Such statements shall show the specific items of rents or royalties for which remittances are

made, and shall identify each remittance by the remittance number, date, amount, and name of each payee.

(d) Rents paid on nonproducing leases pursuant to paragraphs (a) and (b) of this section shall be supported by a statement, acceptable to the Area Director, to be transmitted to the Area Director covering each lease, identified by contract number and lease number. Each remittance shall be identified by the remittance number, date, amount, name of each payee, and dates of mailing of remittances. Date of mailing, or, if remittance is sent by registered mail, the date of registration receipts covering remittances mailed, shall be considered as date of payment.

(e) For leases other than oil and gas, all advance rentals and royalties for the first year shall be paid to the Area Director at the time of filing the lease, and the advance royalty and 20 percent of the first year's rental so paid shall be and become the property of the lessor, if the lease be disapproved because of the lessee's failure to meet the requirements of the law or of the regulations in this part or because of any other fault or defect chargeable to the lessee.

**§ 213.19 Crediting advance annual payments.**

In the event of discovery of minerals, all advance rents and advance royalties shall be allowed as credit on stipulated royalties for the year for which such advance payments have been made. No refund of such advance payments made under any lease will be allowed in the event the royalty on production is not sufficient to equal such advance payment; nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease.

**§ 213.20 [Reserved]**

**§ 213.21 Rate of rents on leases other than oil and gas.**

On all mineral leases of allotted lands other than oil and gas leases, rental shall be paid annually in advance from the date of approval of the lease, as follows: Fifty cents per acre for the first year, 75 cents per acre for the second year, and \$1 per acre for the

third and each succeeding year of the term of the lease.

**§ 213.22 Expenditures under lease other than oil and gas.**

(a) On all leases for deposits of minerals other than oil and gas, there shall be expended for each calendar year the lease is in force, and for each fraction of a calendar year greater than 6 months, in actual mining operations, development, or improvements upon the lands leased, or for the benefit thereof, a sum which, with the annual rental, shall amount to not less than \$5 per acre.

(b) The expenditures for development required by this section upon application may be waived in writing by the Area Director or other officer in charge of the Five Civilized Tribes Agency either before or after the approval of a lease, such waiver to be subject to termination at any time upon 10 days' written notice to the holder of the lease by the said Area Director or other officer in charge.

(c) Each lessee, except oil and gas lessees, shall file with the Area Director an itemized statement in duplicate, within 20 days after the close of each calendar year, of the amount and character of said expenditures during such years the statement to be certified under oath by the lessee or his agent having personal knowledge of the facts contained therein.

**§ 213.23 Royalty rates for minerals other than oil and gas.**

Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding

charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Area Director within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

**§213.24 Rate of rents and royalties on oil and gas leases.**

The lessee shall pay, beginning with the date of approval of oil and gas leases by the Secretary of the Interior, a rental of \$1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, "value" for the purposes of the lease may, in the discretion of the Secretary of the Interior be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production

for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly at such time as the lease provides; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage by causes beyond his control.

**§213.25 Free use of gas by lessor.**

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for all stoves and inside lights in the principal dwelling house on said premises, by making his own connections to a regulator, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

**§213.26 Rate of royalty on casing-head gas.**

(a) On casing-head gas used or sold for the manufacture of casing-head gasoline the minimum rate of royalty shall be 12½ percent of the value of the casing-head gas, which value shall be determined and computed on the basis and in the manner provided in the applicable operating regulations of the Department.

(b) In cases where gas produced and sold has a value for drip gasoline, casing-head gasoline content, and as dry gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on all such values.

**§213.27 Rate of rental for nonutilized gas wells.**

If the gas from a gas producing well is not marketed or utilized, other than for operation of the lease, then for each such well the lessee shall pay such rental as may be determined by the supervisor and approved by the Secretary of the Interior, calculated from the date of the completion of the well. Payment of annual gas rentals shall be made within 30 days from the date such payment becomes due.

**§213.28 Royalty payments and production reports.**

(a) Royalty payments on all oil and gas or other producing leases shall be made at the rates, and at such time, and in the manner prescribed by the terms of the lease.

(b) Quarterly reports shall be made by each lessee on nonproducing leases other than oil and gas within 25 days after December 31, March 31, June 30, and September 30, of each year, upon forms provided, showing manner of operations and total production during such quarter. A lessee may include within one sworn statement all leases upon which there is no production or upon which dry holes have been drilled. Reports of oil and gas leases where royalty accounting is done in the field office of the supervisor will be made as required in the operating regulations.

**§213.29 Division orders.**

(a) Lessees may make arrangements with the purchasers of oil and gas for the payment of the royalties as provided for in the lease and the regulations but such arrangement, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay royalties when due. Where lessees avail themselves of this privilege, division orders should be executed by the lessee and forwarded to the supervisor for approval. Purchasers may be authorized

by the supervisor to reimburse lessees out of royalties for advance rents and advance royalties. Copies of written instructions, notices, modifications, revocations, and authorizations, as provided for in §213.18 (a) and (b), shall be furnished to purchasers. The right is reserved for the supervisor to cancel a division order at any time or require the purchaser to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representatives shall be actually present when the oil is gauged and records are made of the temperature, gravity, and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all the foregoing measurements, which, except lowest gauge, shall be made at the time the oil is turned into the pipeline. Failure of the lessee to perform properly these duties will subject the division order to revocation.

OPERATIONS

**§213.30 Permission to start operations.**

No operations will be permitted on any lease before it is approved. Written permission must be secured from the supervisor before any operations are started under any oil and gas lease. Operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of these regulations may be secured from either the supervisor or the Area Director and no operations should be attempted without a study of the operating regulations.

**§213.31 Restrictions on operations.**

(a) Oil and gas leases issued under the provisions of this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor. In the

exercise of his judgment the Secretary of the Interior may take into consideration, among other things, the Federal laws, State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both.

(b) All such leases shall be subject to any cooperative or unit plan of development affecting the leased lands that may be required by the Secretary of the Interior, but no lease shall be included in any cooperative or unit plan without prior approval of the Secretary of the Interior. If said plan effects a change in the lease terms, the consent of the lessor or lessors must be obtained before the plan is effective.

**§213.32 Wells.**

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of the lease of not to exceed \$1 per

acre per annum, which sum shall be in addition to any rental or royalty herein specified.

**§213.33 Diligence and prevention of waste.**

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent approved by the Area Director; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the Area Director; pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond his control.

**§213.34 Inspection of premises; books and accounts.**

Lessees shall agree to allow the lessors and their agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the applicable regulations of the Department; and their books and records,

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showing manner of operations and persons interested, shall be open at all times for examination by such officers of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations to make such examination.

**§213.35 Mines to be timbered properly.**

In mining operations the lessee shall keep the mine well and sufficiently timbered at all points where necessary, in accordance with good mining practice, and in such manner as may be necessary to the proper preservation of the property leased and safety of workmen.

**§213.36 Surrender of leased premises in good condition.**

On expiration of the term of a lease, or when a lease is surrendered, the lessee shall deliver to the Government the leased ground, with the mine workings in case of leases other than oil and gas, in good order and condition, and the bondsmen will be held for such delivery in good order and condition, unless relieved by the Secretary of the Interior for cause. It shall, however, be stipulated that the machinery necessary to operate any mine is the property of the lessee, but that it may be removed by him only after the condition of the property has been ascertained by inspection by the Secretary of the Interior or his authorized agents, to be in satisfactory condition.

**§213.37 Penalties.**

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, orders of the Area Director or his representative, or of the orders of the supervisor or his representative, shall subject the lease to cancellation by the Secretary of the Interior or the lessee to a penalty of not more than \$500 per day for each day the terms of the lease, the regulations, or such orders are violated, or to both such penalty and cancellation: *Provided*, That the lessee shall be entitled to notice and hearing, within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the su-

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supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

**§213.38 Assignments and overriding royalties.**

(a) Leases or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof. No lease or any interest therein, or the use of such lease, shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary of the Interior. Assignments of leases shall be filed with the Area Director within 20 days after the date of execution.

(b) An agreement creating overriding royalties or payments out of production on oil and gas leases under this part shall be subject to the provisions of §211.26(d) of this subchapter, or as hereafter amended.

[22 FR 10599, Dec. 24, 1957, as amended at 23 FR 9758, Dec. 18, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§213.39 Stipulations.**

The lessee under any lease heretofore approved may by stipulation (Form 5-154i) with the consent of the lessor and the approval of the Secretary of the Interior, make such approved lease subject to all the terms, conditions, and provisions contained in the lease form and regulations currently in use. Stipulations shall be filed with the Area Director within 20 days after the date of execution.

**§213.40 Cancellations.**

(a) When, in the opinion of the Secretary of the Interior, the lessee has violated any of the terms and conditions of a lease or of the applicable regulations, or if mining operations are

conducted wastefully and without regard to good mining practice, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days after issuance of the notice, to declare such lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

(b) On the following conditions, the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(1) That he make application for cancellation to the Area Director having jurisdiction over the land.

(2) That he pay a surrender fee of \$1 at the time the application is made.

(3) That he pay all royalties and rentals due to the date of such application.

(4) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(5) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(6) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of assignment.

(7) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(8) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(9) If there has been a contest respecting a lease or leases, the approved, the disapproved, or the canceled parts thereof will be held in the office of the Area Director for 5 days after the Department's decision has

been promulgated, by mail or delivery, and will not be delivered, if within that period a motion for review and reconsideration be filed, until such motion is passed upon by the Department.

(10) In the event oil or gas is being drained from the leased premises by wells not covered by a lease; the lease, or any part of it, may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

(c) No part of any advance rental shall be refunded to the lessee nor shall he be relieved, by reason of any subsequent surrender or cancellation of the lease, from the obligation to pay said advance rental when it becomes due.

(d) For proper method of terminating departmental leases covering lands from which restrictions have been removed see section 3 of the act of May 27, 1908 (35 Stat. 312).

#### REMOVAL OF RESTRICTIONS

##### **§213.41 Leases executed but not approved before restrictions removed from land.**

Leases executed before the removal of restrictions against alienation on land from all of which restrictions against alienation shall be removed after such execution, if such leases contain specific provisions for approval by the Secretary of the Interior, whether now filed with the Department or presented for consideration hereafter, will be considered and acted upon by this Department as heretofore but only for the purpose of approving or disapproving the instrument.

##### **§213.42 Operations after removal of restrictions from leased lands.**

(a) Oil and gas leases heretofore approved and leases for other minerals now or hereafter in force on land from all of which restrictions against alienation have been or shall be removed, even if such leases contain provision authorizing supervision by this Department, shall after such removal of restrictions against alienation, be operated entirely free from such supervision, and the authority and power delegated to the Secretary of the Interior in said leases shall cease and all payments required to be made to the Area Director shall thereafter be made

to the lessor or the then owner of the land, and changes in regulations thereafter made by the Secretary of the Interior shall not apply to such leased land from which said restrictions are removed.

(b) In the event restrictions are removed from a part of the land included in any lease to which this section applies the entire lease shall continue subject to the supervision of the Secretary of the Interior, and all royalties thereunder shall be paid to the Area Director until such time as the lessor and lessee shall furnish the Secretary of the Interior satisfactory information that adequate arrangements have been made to account for the oil, gas or mineral upon the restricted land separately from that upon the unrestricted. Thereafter the restricted land only shall be subject to the supervision of the Secretary of the Interior: *Provided*, That the unrestricted portion shall be relieved from such supervision as in the lease or regulations provided.

**§ 213.43 Relinquishment of Government supervision.**

All oil and gas leases hereafter executed shall contain the following relinquishment of supervision clause and terms operative after such relinquishment, or other provisions similar in substance:

Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days' written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3(c). After notice of relinquishment has been received by lessee, as herein provided this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provision of section 9 hereof. Rentals and royalties shall be paid directly to lessor, his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to

the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of no further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: *Provided*, That lessee shall pay in the manner prescribed by section 3(c), for the benefit of lessor such proportion of all rentals and royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

Division of fee. It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: *Provided*, That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: *Provided further*, That, if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership of separate parcels of the land covered hereby, lessee at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title. (The above provisions are copied from oil and gas mining lease Form 5-154h,<sup>1</sup> revised April 24, 1935.)

<sup>1</sup>For information relative to obtaining Form 5-154h, see § 211.30.

**§213.44 Division of royalty to separate fee owners.**

Should the removal of restrictions affect only part of the acreage covered by a lease containing provisions to the effect that the royalties accruing under the lease, where the fee is divided into separate parcels, shall be paid to each owner in the proportion which his acreage bears to the entire acreage covered by the lease, the lessee or assignee of such unrestricted portion will be required to make the reports required by the regulations in this part and the operating regulations with respect to the beginning of drilling operations, completion of wells, and production the same as if the restrictions had not been removed. In the event the unrestricted portion of the leased premises is producing, the owner of the lease thereon will be required to pay the portion of the royalties due the Indian lessor at the time and in the manner specified by the regulations in this part.

**§213.45 Restrictions especially continued as to certain lands.**

Restricted lands allotted as either homestead or surplus allotments, designated as tax exempt under section 4 of the act of May 10, 1928, as amended May 24, 1928 (45 Stat. 495, 733), the entire interest in which was acquired by inheritance, gift, devise, or purchase with restricted funds, by persons of one-half or more Indian blood, after the passage of the act of January 27, 1933 (47 Stat. 777), continue to be restricted under the provisions of the last mentioned act and oil and gas leases thereof are subject to the regulations in this part and all such leases to be valid must be approved by the Secretary of the Interior. Lands inherited by or devised to full blood Indians prior to the act of January 27, 1933, are not affected as to restrictions by the provisions of said act and may continue to be leased with the approval of the county court having jurisdiction of the estate of the deceased allottee and without approval of the Secretary of the Interior (54 L.D. 382; 10 F. (2d), 487). Lands acquired prior to the passage of the act of January 27, 1933 by Indians of less than full blood, whether such lands were restricted and tax exempt or restricted and taxable, passed to such persons

free of all restrictions. Inherited homesteads restricted prior to April 26, 1931, by section 9,<sup>2</sup> of the act of May 27, 1908 (35 Stat. 312), for the benefit of heirs of one-half or more Indian blood but less than full bloods, born after March 4, 1906, became unrestricted April 26, 1931, or upon the death prior thereto of the heir born subsequent to March 4, 1906, and oil and gas leases thereof are not subject to the regulations in this part nor under the jurisdiction of the Secretary of the Interior.

**§213.46 Field clerks.**

Local representatives known officially as "field clerks" are located in the various districts comprising that part of the State of Oklahoma occupied by the Five Civilized Tribes. Such field clerks shall report to and act under the direction of the Area Director. Any and all counsel and advice desired by allottees concerning deeds, leases, or other instruments or matters relating to lands allotted to them shall be furnished by such field clerks free of charge. Field clerks shall not, during their term of employment, have any personal interest, directly or indirectly, in any transaction concerning leases covering lands of allottees or in the purchase or sale of any such lands regardless of whether the restrictions have or have not been removed. This prohibition, however, shall not apply to lands which such field clerks have legally acquired before their employment in the Bureau of Indian Affairs. Field clerks shall report to the Area Director at the end of each month the work performed during such period and special reports shall be made immediately of any apparently illegal transaction involving the estates or allotments of allottees.

**§213.47 Forms.**

The provisions of §211.30 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

<sup>2</sup>Repealed restrictions on inherited homesteads, by sec. 2 of the act of May 10, 1928 (45 Stat. 495).

**§ 213.48 Effective date.**

The regulations in this part shall become effective and in full force from and after the date of approval (Apr. 27, 1938), and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties to the lease. All former regulations governing the leasing of individually owned lands of the Five Civilized Tribes for mining purposes are superseded by the regulations in this part.

**§ 213.49 Scope of regulations.**

The regulations in this part shall apply in so far as practicable to land purchased for Indians under the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501-509), as well as to other lands of individual Indians of the Five Civilized Tribes.

**PART 214—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS**

- Sec.
- 214.1 Definition.
- 214.2 Sale of leases.
- 214.3 Corporate information.
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- 214.29 Prospecting; abandonment of mines.
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AUTHORITY: Sec. 3, 34 Stat. 543.

SOURCE: 22 FR 10605, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 214.1 Definition.**

The term "officer in charge" shall refer to the superintendent of the Osage Indian Agency and school or other representative of the Government who may, for the time, be in charge of the Osage Agency and school, or any person who may be detailed by the Secretary of the Interior or the Commissioner of Indian Affairs to take charge of leasing or mining operations under the regulations in this part.

**§ 214.2 Sale of leases.**

Leases of minerals other than oil and gas may be negotiated with the tribal council after permission to do so has been obtained from the officer in charge. Leases with all papers required, shall be filed with the officer in charge within 30 days from the date of execution by the lessee and the principal chief of the Osage Tribe. The lease will be forwarded to the Commissioner of Indian Affairs for consideration by him and the Secretary of the Interior and will become effective only after approval by the Secretary of the Interior. If any lease should be disapproved through no fault of the lessee, all amounts deposited by him will be promptly refunded.

**§ 214.3 Corporate information.**

A corporation shall file with its first lease a certified copy of articles of incorporation, and, if a foreign corporation, evidence showing compliance with local corporation laws in duplicate; a list of all stockholders, with their post office addresses, and showing the number of shares of capital stock held by each; together with a sworn statement of its proper officer showing:

- (a) The total number of shares of the capital stock actually issued, the number of shares actually sold and the amount of cash paid into the treasury

out of the stock sold, or, if paid in property, kind, quantity, and value of the same.

(b) Of the stock sold, how much per share remains unpaid and subject to assessment.

(c) How much cash the company has in its treasury and elsewhere, and from what source it was received.

(d) What property, exclusive of cash, is owned by the company, and its value.

(e) What the total indebtedness of the company is, and the nature of its obligations.

(f) Names of officers and directors.

**§214.4 Bonds.**

Lessee shall furnish with each lease at the time it is filed with the officer in charge an acceptable bond not less than the following amounts:

For less than 80 acres .....	\$1,000
For 80 acres and less than 120 acres .....	1,500
For 120 acres and not more than 160 acres .....	2,000
For each additional 40 acres, or part thereof above 160 acres .....	500

*Provided*, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representatives with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That the lessee shall be allowed to file bond, Form S<sup>1</sup> covering all leases to which he or they are or may become parties instead of a separate bond in each case, such bond to be in the penal sum of \$15,000. The right is reserved to change the amount of the bond in any particular case, or to require a new bond in the discretion of the Secretary of the Interior.

[26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§214.5 Additional information.**

The officer in charge may, at any time, either before or after approval of a lease call for any additional information necessary to carry out the purpose

<sup>1</sup>For further information concerning forms, see §214.24.

and intent of the regulations in this part, and such information shall be furnished within the time specified in the request therefor.

**§214.6 Failure of lessee to complete lease.**

Should a lessee fail to furnish, within the time specified after his bid is accepted, the papers necessary to put his lease and bond in proper form for consideration, the officer in charge shall recommend that the sale be disapproved and money paid forfeited to the Osage Tribe.

**§214.7 Operation not permitted until lease approved; 160 acres maximum for single lease.**

No mining or work of any nature will be permitted upon any tract of land until a lease covering such tract shall have been approved by the Secretary of the Interior and delivered to the lessee. All leases shall be made for such period as the title to the minerals remain in the Osage Tribe, which time will expire April 8, 1931, unless otherwise provided by Congress and shall be subject to cancellation or termination as specified in this part. Leases made by corporations shall be accompanied by an affidavit by the secretary or president of the company showing the authority of its officers to execute leases, bonds, and other papers. No lease shall be made covering more than 160 acres.

**§214.8 Acreage limitation.**

No person, firm, or corporation shall hold under lease at any one time without special permission from the Secretary of the Interior in excess of the following areas:

(a) For deposits of the nature of lodes, or veins containing ores of gold, silver, copper, or other useful metals, 640 acres.

(b) For beds of placer gold, gypsum, asphaltum, phosphate, iron ores, and other useful minerals, other than coal, lead, and zinc, 960 acres.

(c) For coal, 4,800 acres.

(d) For lead and zinc, 1,280 acres.

**§214.9 Advance rental.**

(a) Lessees shall pay, in addition to other considerations, annual advance rentals as follows: 15 cents per acre for

§ 214.10

the first year; 30 cents per acre for the second year; 50 cents per acre for the third year; and \$1 per acre per annum for the fourth and each succeeding year during the life of any lease: *Provided*, That all such payments of advance rentals shall be credits on royalties on production during the year for which payment of advance rental is made.

(b) The payment of annual advance rental shall not release the lessee from the obligation to conduct mining operations, as required by the terms of the lease.

**§214.10 Royalty rates.**

Royalties will be required as follows, subject to the approval of the President, in accordance with the act of June 28, 1906 (34 Stat. 543):

(a) For gold, silver, or copper lessee shall pay quarterly a royalty of 10 percent to be computed on the gross value of the ores as shown by reduction returns after deducting freight and treatment charges. Duplicate reduction returns shall be filed by the lessee with the officer in charge within 20 days after the reduction of the ores.

(b) For coal the lessee shall pay a royalty of 10 cents per ton of 2,000 pounds on mine run or coal as taken from the mines, including what is commonly called "slack."

(c) For asphaltum and allied substances, the lessee shall pay quarterly a royalty of 10 cents per ton of 2,000 pounds on crude material, and 60 cents per ton on refined substances.

(d) For substances other than gold, silver, copper, lead, zinc, coal, and asphaltum the lessee shall pay quarterly a royalty of 10 percent of the value at the nearest shipping point of all ores, metals, or minerals marketed.

(e) The royalties to be paid for lead and zinc shall be computed for each mineral at the same rate that the amount of the concentrates of such mineral bears to the total amount of dirt or rock actually mined, except as stipulated in this section. The royalty so determined shall be increased by adding 1 percent for each increase of \$10 in the selling price per ton thereof over and above the following, which shall be the agreed base or standard:

For zinc—\$50  
For lead—\$65

but in no case shall the rate of royalty be less than 5 percent or more than 20 percent. The percentage of recovery shall be computed as nearly as practicable upon the ore included in each sale, but where it is impracticable so to do the officer in charge and the lessee shall agree upon some other method of computation which will produce substantially the same result: *Provided*, That in case of their disagreement the Commissioner of Indian Affairs shall prescribe a rule of computation to be followed in such cases.

NOTE: The royalty would always be determined under this rule by ascertaining the percentage of recovery were it not for two things: (1) the flat rates which are fixed as the minimum and the maximum rates of royalty and (2) variations in the selling price of the ores. Concrete examples coming under the rule are set forth in the following table:

ZINC		
[Where the base or standard is \$50 per ton]		
Percentage of recovery	Selling price	Royalty (percent)
7	\$48	7
14	49	14
12	50	12
15	60	16
30	60	20
9	70	11

A similar table might be constructed for royalties on lead, but in so doing it would be necessary to bear in mind that the base or standard selling price for the lead is to be \$65 instead of \$50.

**§214.11 Payment of rents and royalties.**

All rentals, royalties, damages, or other amounts which may become due under leases approved in accordance with the regulations in this part shall be paid to the disbursing agent at Pawhuska, Okla. The remittances shall be in St. Louis exchange, except that where such exchanges cannot be procured post office or express money orders will be accepted. All royalties or other payments or claims of the Osage Tribe arising under such leases shall be a lien upon the mining plant machinery, and all minerals mined on the property leased or in which the lessee still retains any right, claim, or interest.

**§214.12 Time of payment of royalties.**

Royalties on all minerals produced in any quarter (January-March, April-June, July-September, October-December) shall be paid on or before the 25th day of the month next succeeding, and the remittance shall be accompanied by sworn reports covering all operations, whether there has been production or not. Annual advance rentals shall be paid within 10 days after the beginning of the lease year.

**§214.13 Diligence; annual expenditures; mining records.**

(a) Lessees shall exercise diligence in the conduct of prospecting and mining operations, and on all leases referred to in §214.8(a) shall expend annually in development work a sum which with the annual rental shall make an amount of not less than \$5 per acre. On all leases referred to in §214.8 (b) and (c) there shall be expended annually in development work a sum which inclusive of the annual rental shall make an amount of not less than \$1 for each acre or fraction thereof included in the lease. The lands covered by each lease referred to in §214.8 (d) shall be prospected for lead and zinc ores by drilling within 1 year test holes aggregating 2,000 feet unless a sufficient ore body is discovered to justify the sinking of a shaft to the ore body and the erecting of a mill when such tract may be released from further prospecting by the written consent of the superintendent: *Provided*, That within 90 days after an ore body of sufficient quantity is discovered, and shown by the logs or records of the drill holes, to justify the expenditure, the sinking of a shaft to the ore body, and the erection of a mill shall be commenced and continued to completion without cessation of work thereon, barring unavoidable accidents or causes beyond the control of the lessee.

(b) Lessee shall keep upon the leased premises accurate records of the drilling, re-drilling, or deepening of all holes showing the formations, and upon the completion of such holes, copies of such records shall be transmitted to the superintendent by the lessee after the first completion and of any further drilling thereafter, and a failure to so furnish report within the time pre-

scribed shall be considered a violation of the regulations. Lessee shall, before commencing operations, file with the superintendent a plat and preliminary statement of how the openings are to be made and the property developed.

**§214.14 Use of surface lands.**

(a) Lessees may use so much of the surface of the leased land as shall be reasonably necessary for the prospecting and mining operations and buildings required by the lease, and shall also have the right-of-way over and across such land to any point of prospecting or mining operations, but such use of the surface shall be permissible only under condition of least injury and inconvenience to the allottee or owner of the land. Lessees before commencing and during such operations shall pay all reasonable damages for the use of the surface land and to any growing crops thereon, or to improvements on said land, or any damage that during the life of the lease may be occasioned in any manner whatsoever by the use of the surface, to the allottee or his successor in interest or assignee, or to a lessee of the surface of said land or to an oil and gas lessee, damages to be apportioned among the parties interested in the surface, whether as owner, lessee, or otherwise, as the parties in interest may mutually agree or as their interests may appear. If the parties are unable to agree concerning damages the same shall be determined by arbitration.

(b) All agreements (or authenticated copies thereof) providing for the settlement of damages shall be filed in the Osage Agency if the surface owner is a restricted Indian, and all such amounts which may be due and payable to any such Indian shall be paid to the superintendent and by him immediately remitted to the Indian entitled thereto. All sums due as royalty or damages shall be a lien on all equipment on leased premises.

**§214.15 Homesteads.**

Lessees and those acting under them shall not conduct prospecting or mining operations within or upon any homestead selection without written

consent of the Secretary of the Interior.

**§ 214.16 Settlement of damages.**

Any person, other than a lessee or an allottee or the heirs of a deceased allottee, claiming an interest in any leased tract or in damages thereto must furnish to the officer in charge a statement in writing showing his interest, and failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

**§ 214.17 Use of timber from restricted lands.**

Lessees will not be permitted to use any timber from any Osage lands not relieved of restrictions upon alienation except under written agreement with the owner approved by the officer in charge.

**§ 214.18 Assignments.**

Approved leases or any interest therein may be transferred or assigned with the consent and approval of the Secretary of the Interior and not otherwise. Transfers or assignments, when so approved, shall be subject to the terms and conditions of the original leases and regulations under which such leases were approved as well as to such additional requirements as the Secretary of the Interior may prescribe. The transferee or assignee shall furnish with his transfer or assignment a satisfactory bond as prescribed in § 214.4 in connection with leases. Any attempt to transfer or assign an approved lease or any interest therein without the consent and approval of the Secretary of the Interior shall be absolutely void and shall subject the original lease to cancellation in the discretion of the secretary.

**§ 214.19 Cancellation.**

When a lessee makes application for the cancellation of a lease in whole or in part, all royalties or rentals due up to and including the date of the application for cancellation must be paid, and that part of the lease delivered to the lessee shall be surrendered before such application will be considered. In the event a lease is surrendered for

cancellation in whole or in part, after a new lease year has been entered upon, the lessee and his surety shall be liable for the advance rentals required to be paid under the lease for that year, and no part of such rentals which may have been paid shall be refunded.

**§ 214.20 Annual reports by corporate lessees.**

Lessees and assignees must submit to the officer in charge on January 1, of each year and at such other times as may be required by the Secretary of the Interior, a statement containing the information called for in § 214.3(a) and (f) and also showing any changes in officers or changes in or additions to stockholders. At any time individual stockholders may be required to show to the satisfaction of the Secretary of the Interior in what companies or with what persons or firms they are interested in mining leases on the Osage Reservation and whether they hold such stock or interest for themselves or in trust.

**§ 214.21 Inspection of lessees' books and records.**

Lessees shall allow the agents and representatives of the lessor, or any authorized representative of the Interior Department, to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and their books and records showing manner of operations and persons interested, shall be open at all times for the examination of such officers of the department as shall be instructed by the Secretary of the Interior to make such examinations.

**§ 214.22 Serving of notices.**

Wherever notice is provided for in this part it shall be sufficient if notice has been mailed to the last known place of address of the party, and time shall begin to run with the day next ensuing after the mailing or from the date of delivery of personal notice; but where the party is outside the State of Oklahoma the officer in charge may, in his discretion, increase the time allowed.

**§214.23 Plat of mine location.**

Lessees are required, when so requested, to file a plat of their leases showing exact locations of all mines, proposed locations, power houses, etc.

**§214.24 Forms.**

Applications, leases, and other papers must be upon forms prepared by the department, and the superintendent of the Osage Indian school, Pawhuska, Okla., will furnish prospective lessees with such forms at a cost of \$1 per set.

Form M. Application for mining lease, including financial showing.

Form N. Lease (except lead and zinc).

Form O. Bond.

Form P. Authority of officers to execute papers.

Form Q. Assignment.

Form R. Lease for lead and zinc.

Form S. Collective bond.

**§214.25 Forfeiture of lease.**

On the failure of any lessee or assignee to comply with any regulation or any obligation in the lease or assignment, the Secretary of the Interior may cancel and annul such lease without resorting to the courts and without any further proceeding: *Provided*, That the party or parties charged with such violation shall be first given not less than 30 days' notice to show cause why such lease should not be canceled and annulled or other order made with reference thereto.

**§214.26 Fine; notice and hearing.**

Violation of any of the terms or conditions of any lease or of the regulations pertaining thereto shall subject the lease to cancellation by the Secretary of the Interior, or the lessee to a fine of not exceeding \$500 per day for each and every day the terms of the lease or of the regulations are violated, or the orders of the superintendent in reference thereto are not complied with, or to both such fine and cancellation in the discretion of the Secretary of the Interior: *Provided*, That the lessee shall be entitled to notice and hearing with respect to the terms of the lease or of the regulations violated, which hearing shall be held by the superintendent, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30

days after notice of the superintendent's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

**§214.27 Changes in regulations.**

The regulations in this part are subject to change or alteration at any time by the Secretary of the Interior.

**§214.28 Location of sites for mines and buildings.**

In event of disagreement between two or more mineral lessees regarding sites for the location of wells, mines, buildings, plants, etc., the same shall be determined by the superintendent after investigation and after due consideration of prior right of any lessee by reason of date of approval of lease.

**§214.29 Prospecting; abandonment of mines.**

All prospecting or mining operations or the abandonment of a well or mine shall be subject to the approval of the superintendent, and any disagreement between lessees of mineral leases regarding operations likely to result in injury to either lessee shall be determined by the superintendent, whose decision shall be final, unless an appeal is filed with the Secretary of the Interior within 30 days after notice of such decision.

**§214.30 Lessees must appoint local representative.**

Before actual drilling or development operations are commenced on leased lands, the lessee or assignee shall appoint a local or resident representative within the State, on whom the superintendent or other authorized representative of the department may serve notice or otherwise communicate with in securing compliance with the regulations in this part and shall notify the superintendent of the name and post office address of the representative so appointed.

## PART 215—LEAD AND ZINC MINING OPERATIONS AND LEASES, QUAPAW AGENCY

Sec.

215.0 Definitions.

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- 215.23a Suspension of operations and production on leases for minerals other than oil and gas.
- 215.24 Books and accounts.
- 215.25 Other minerals and deep-lying lead and zinc minerals.

AUTHORITY: Sec. 26, 41 Stat. 1248; 50 Stat. 68.

SOURCE: 22 FR 10608, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§215.0 Definitions.**

The following expressions, wherever used in the regulations in this part or leases thereunder, shall have the meaning designated in this section:

(a) *Superintendent*. The term "superintendent" shall mean any person in charge of the Quapaw Indian Agency, or having supervision under the direction of the Secretary of the Interior of the Indian restricted and trust allotted lands thereunder.

(b) *Allottee*. The term "allottee" shall mean any Indian to whom land has been allotted, or any Indian owner of land or interest therein as an heir or devisee.

(c) *Incompetent Indian*. The term "incompetent Indian" or "incompetent" shall mean any Indian who has been declared by the Secretary of the Interior to be incompetent to improve or manage his restricted or trust lands properly or with benefit to himself. The

term shall also include any Indian who is a minor and any Indian who is a legal incompetent under the laws of the State. The term shall also apply to any Indian who is in fact incompetent, and the question of whether an Indian is competent or incompetent at the time of making a lease of his restricted or trust Indian lands is one for the Secretary of the Interior to determine.

(d) *Lessee*. The term "lessee," except where otherwise modified or limited in the regulations in this part, shall mean any person, firm, or corporation, their legal representatives, heirs, or assigns, to whom a lead and zinc mining lease has been made by or on behalf of Indians under the provisions of the regulations in this part.

(e) *Lessor*. The term "lessor," except where otherwise modified or limited in the regulations in this part, shall mean any Indian owning or having any interest in restricted or trust allotted any inherited lands under the supervision of the Quapaw Indian Agency, by or for whom a lease has been executed pursuant to the regulations in this part.

(f) *Leased lands*. The terms "leased lands," "leased premises," or "leased tract" shall mean any leased restricted or trust lands within and under jurisdiction of the Quapaw Indian Agency allotted to or inherited by an Indian.

(g) *Mining operations*. The term "mining operation" or "operations," except where otherwise modified or limited in the regulations in this part or in leases thereunder shall mean actual drilling, mining, or construction on the leased lands.

**§215.1 No operations until lease approved.**

No operations under any lease executed under the regulations in this part shall be permitted upon any restricted or trust lands allotted to or inherited by an Indian until such lease covering such tract shall be approved by the Secretary of the Interior.

**§215.2 Local representative of lessee.**

Before actual drilling or development operations are commenced on the leased lands the lessee shall appoint a local or resident representative within Ottawa County, Oklahoma, on whom the superintendent may serve notice or

otherwise communicate with in securing compliance with the regulations, and shall notify the superintendent of the name and post office address of the representative so appointed. In the event of the incapacity or absence from the county of Ottawa of such designated local or resident representative, the lessee shall appoint some person to serve in his stead, and in the absence of such representative or of notice of the appointment of a substitute any employee of the lessee upon the leased premises, or the contractor, or other person in charge of mining operations thereon shall be considered the representative of the lessee for the purpose of service of orders or notices as provided in this part, and service upon any employee, contractor, or other person shall be deemed service on the lessee. Wherever a notice is provided for in the regulations in this part or in the lease from it shall be deemed sufficient if notice has been mailed to the last known address of the lessee or his local or resident representatives, and time shall begin to run with the day next ensuing after the mailing, or from date of delivery of personal notice.

**§215.3 Manner and time of royalty payments.**

All royalties belonging to the lessor shall be paid to the superintendent of the Quapaw Agency at Miami, Okla., or such other official as the Secretary of the Interior may designate, for the benefit of the lessor, not later than 15 days from the 1st of each month for ore and concentrates sold during the preceding month.

**§215.4 Leases to be sold at public auction.**

Except as otherwise provided in the regulations in this part, no lead and zinc mining lease under this part of restricted or trust allotted and inherited Indian lands within and under the Quapaw Indian Agency shall be made except to the highest responsible bidder at public auction.

**§215.5 Royalty rates.**

(a) In leases offered for sale at public auction under the regulations in this part the royalty to be paid by the lessee shall be stipulated at a fixed per-

cent of the gross proceeds of all lead and zinc ores and concentrates extracted from the leased premises, the royalty to be computed and based upon each sale of ore or concentrates separately, the rate of royalty to be determined and fixed by the Secretary of the Interior in the case of each lease prior to the offering of such lease for sale. Subject to the right of the Secretary of the Interior to reject any and all bids, leases offered for sale at public auction shall be awarded in each case to the responsible bidder submitting the highest bonus offer.

(b) In leases not offered for sale at public auction but otherwise made and entered into under the provisions of the regulations in this part the royalty stipulated and fixed therein shall be such as may be determined by the Secretary of the Interior or as may be agreed upon in each case, subject to the approval of the Secretary of the Interior.

(c) It shall be further provided, however, that said sale-price basis for the determination of the rates and amount of royalty shall not be less than the highest and best obtainable market price of the lead and zinc ores and concentrates at the usual and customary place of disposing of such ores and concentrates at the time of sale: *Provided, however,* That the right is reserved to the Secretary of the Interior to determine and declare such market price if it is deemed necessary for him to do so for the protection of the interests of the Indian lessor: *And provided further,* That the right is reserved to the Secretary of the Interior on behalf of the Indian lessors to reserve at any time it shall be deemed to be to the best interests of the Indian lessors and upon due notice to the lessee, the royalty share of the gross production of the ore and concentrates and upon such notice that the royalty share of such production shall be stored and not sold, the lessee shall be required to store, free of charge to the Indian lessors in the ore bins of said lessee, said royalty shares of the gross production of ore and concentrates, provided that the lessee may not be required to store ore or concentrates for the lessor in amounts

greater than one-third of his bin capacity or for a period longer than 6 months.

**§215.6 Applications for leases; consent of Indian owners.**

(a) Applications or requests by the Indian owners of restricted or trust land, or by others, that such land be leased or offered for lease for lead and zinc mining purposes should be addressed to the Secretary of the Interior and submitted through the superintendent of the Quapaw Indian Agency. Upon receipt of such applications or requests, the superintendent shall give consideration thereto and forward the same to the Commissioner of Indian Affairs with his report and recommendation.

(b) In no instance will a new lease be executed and delivered (or advertised for sale to the highest bidder) unless the Indian owner thereof, if an adult who has not been specifically found by the Secretary of the Interior to be personally incompetent to transact ordinary business affairs, has agreed to the terms of said lease or the terms under which said lease is advertised for lease, except in cases where the land is owned by several co-tenants, and, in such cases, no such lease shall be given or advertised for sale unless the co-owners or a majority in interest, if adults, and not specifically declared incompetent, have first consented thereto: *Provided*, That in the event the majority in interest is owned by minors, or adults specifically found to be incompetent, then and in that event, the Secretary of the Interior reserves the right to lease the entire tract if, in his opinion, such leasing will inure to the best interest of the restricted Indian owners.

**§215.7 Advertisement of sale of leases.**

Upon authority being granted by the Secretary of the Interior to the superintendent to offer for sale at public auction a lead and zinc mining lease of any tract or tracts of restricted or trust allotted and inherited Indian lands, the superintendent shall cause a notice to be published once a week for at least 4 weeks in some designated newspaper of general circulation in the county in which the land is located, setting forth that upon a certain day,

which shall be not less than 30 days from the first publication of such notice and at a place to be named in the notice, the superintendent or other duly authorized representatives of the Secretary of the Interior will offer for sale at public auction a lead and zinc mining lease of such lands to the highest and best bidder, subject to the rules and regulations prescribed by the Secretary of the Interior, notice to be in such form as may be prescribed by the Secretary of the Interior.

**§215.8 Submission of bids.**

At the time of public auction bidders may submit their bids in person or by authorized agents, but in the latter case the bids must be accompanied by power of attorney duly executed by the real party or person in interest. Sealed bids may be submitted by mail or otherwise to the superintendent at his office at Miami, Okla., or delivered to him at the place set for the sale at any time prior to the hour fixed for offering the lease for sale. At the time and place of the public auction and before receiving the public bids the officer in charge shall announce the amounts and terms of all sealed bids received by him and the names of the bidders. The persons present, including those, if any, who may have theretofore submitted sealed bids, shall then be allowed to offer public bids. Bids must contain the offer of the stipulated and fixed royalty (see §215.5 as to royalty) and, in addition thereto, the offer of a bonus payable as follows: 25 percent at time of sale and the balance before or at time of execution of the lease contract. Bidders shall be required to submit with their bids a draft or certified check payable to the order of the superintendent covering the advance rental for the first year on the proposed leasehold and 25 percent of the amount of the bonus offered. The superintendent shall, in each case, determine the highest and best bid, said determination, however, to be subject to the approval of the Secretary of the Interior. Upon approval by the Secretary of the Interior of the award, the successful bidder shall, within 30 days from notice thereof, enter into and execute the lease contract in accordance with said bid and the regulations in this part. The

lease so executed shall be subject to the approval of the Secretary of the Interior and may be accepted or rejected by him when submitted for his approval. The right is reserved to the Secretary of the Interior, in the event of the rejection of such lease, to authorize and instruct the superintendent to accept the offer of some competitive bidder or to readvertise the land for lease. The report of the superintendent to the Commissioner of Indian Affairs relative to the auction sale shall contain full information as to all bids received for the lease rights on the land. If any person or party fails or refuses to execute a lease after being declared the highest bidder or after being awarded such lease, the amount tendered with his bid shall be forfeited to the superintendent for the benefit of the owner of the land.

#### §215.9 Execution of leases.

Whenever a lease award to a proposed lessee has been approved by the Secretary of the Interior, as provided in §§215.7 and 215.8, the lease contract shall be executed by the Indian owner of the land, if he be an adult and not incompetent as defined in §215.0(c). Before any lease is entered into by the Indian owners or is approved by the Secretary of the Interior, all the adult and competent owners or co-owners of the tract of land which it is proposed to lease, shall be furnished by the Bureau such geological reports as may be available or that can be secured from the representative of the Geological Survey showing the estimated mineral reserves on said property, the estimated reasonable value of such property for mining purposes, and such other data as might reasonably be necessary to fully advise the owners of said property of the then present status and mining value of their lands. If the Quapaw or other Indian owner of the land is a minor, or is otherwise an incompetent as defined in the regulations in this part, the lease contract shall be executed by the superintendent for and on behalf of such minor or such incompetent. The leases executed, either by the Indian owner of the land or by the superintendent in his behalf, shall be subject to the approval of the

Secretary of the Interior and shall be effective only upon such approval.

[22 FR 10608, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

#### §215.10 Renewal of leases on developed lands.

(a) In cases where the lands have heretofore been leased, and lead and zinc ores have been discovered hereon, and it shall appear to the Secretary of the Interior to be advisable and to the best interests of the Indian owners of the lands that the terms of the existing lease or leases be extended or that a new lease or leases for an additional period of time, or that a new lease or leases to take effect upon the expiration of present valid leases, should, upon application therefor, be granted to either the present lessees or to parties holding under assignments, subleases, or mining contracts, from such present lessees, or to parties who have expended capital in lead and zinc mining operation and development of the land under such leases, assignments, subleases, or mining contracts, a new lease or leases or contract of extension or existing lease or leases as may be authorized by the Secretary of the Interior may be entered into with the proper party or parties as may be determined by said Secretary of the Interior, and such new lease or leases or contract of extension of existing lease or leases shall be executed subject to the regulations in this part by and between the Indian owner of the land, if an adult and not incompetent as defined in §215.0 (c), and said proper party or parties. If the Quapaw or other Indian owner of the land is a minor or an otherwise incompetent as defined in §215.0 (c), the superintendent shall execute the new lease or leases or contract of extension of existing lease or leases for and on behalf of said Indian minor or incompetent. Said new leases or contracts of extension of old leases, whether executed by the Indian owner of the land or by the superintendent for and in his behalf, shall be subject to the approval of the Secretary of the Interior and shall become effective only upon such approval. No offering for sale at public auction or advertisement of sale

will be necessary in reference to contracts of extension of leases, or to leases entered into under this section, as above provided, but such lease or contract shall be upon such terms as to bonus and royalty as may be determined and fixed in each case by the Secretary of the Interior under the provisions of §215.5. The approval by the Secretary of the Interior of new leases or of the contracts of extension of old leases shall be conclusive as to the validity of said leases, or contracts of extension of leases, the manner and method of negotiating the same, and the execution thereof. If, however, in any case where lands have heretofore been leased and lead and zinc ores have been discovered thereon, it shall appear to the Secretary of the Interior that the extension of the existing lease or leases or the granting of new leases to the present lessees, or to the persons or parties holding under said lessees by assignment, sublease, or mining contract, would not be to the best interests of the Indian owners of the land, the Secretary of the Interior may, at the expiration, cancellation, or forfeiture of the existing lease, cause the mining lease rights on said land to be offered for sale at public auction to the highest bidder. If the lead and zinc mining lease on said land be offered for sale at public auction, the same procedure shall be followed as provided in §§215.7 through 215.9.

(b) Applications under the provision of this section for a lease or extension of lease or for the approval of such lease or extension of lease will not be received or considered prior to the period of 1 year next preceding the date of the expiration of such valid existing lease or leases as may be on the land covered by such application.

(c) Applications under the provisions of this section for a lease or extension of lease or for the approval of such lease or extension of lease shall be filed with the superintendent of the Quapaw Agency at any time within the period of 1 year next preceding the date of the expiration of such valid existing lease or leases as may be on the land covered by such application, and if the records of or papers in the office of said superintendent or the records of the county court of Ottawa County, Okla., indi-

cate that there are any prior existing leases, subleases, assignments of leases or mining contracts covering any of the land applied for, the superintendent shall notify all persons having or claiming any rights or interest in or under said prior existing leases, subleases, assignments of leases, or mining contract concerning said application for lease or extension of lease, and that they will be allowed 10 days in which to file with the superintendent any objection they may have to the allowance of the application or to the approval of the new lease or extension of existing lease. If objection or protest is made by any owner of the land or by any person claiming rights or interests in or under existing lease, sublease, assignment of lease, or mining contract, a reasonable time, not exceeding 20 days, shall be allowed them in which to file their statement or brief in support of their protest or objection, and a reasonable further time not exceeding 10 days shall be allowed the applicant for new lease or for extension of existing lease to reply in support of the application. In case of contest, hearings may be had if deemed necessary by the Secretary of the Interior or his representative. The application and papers in each case shall be forwarded by the superintendent of the Quapaw Indian Agency to the Commissioner of Indian Affairs with his report and recommendation in regard thereto.

**§215.11 New leases where prior leases have been forfeited or abandoned.**

In cases where the lands have heretofore been leased and lead and zinc ores have been discovered but the mines and mining operations have been abandoned and the leases have been canceled or forfeited or have expired, special arrangements in the matter of the leasing and mining of said lands may be made provided the consent thereto of the Secretary of the Interior be first obtained. Applications containing special offers as to the terms and conditions may be considered by the Secretary of the Interior and the leasing of said lands may be made upon such special terms and conditions as the Secretary of the Interior may in each case deem to be for the best interests of the Indian owners of the land.

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If, however, in any case, it shall appear to the Secretary of the Interior that the granting of such lease would not be to the best interest of the Indian owners of the land, the Secretary of the Interior may cause the mining lease rights on said land to be offered for sale at public auction to the highest bidder. If the lead and zinc mining lease on said land be offered for sale at public auction, the same procedure shall be followed as provided in §§215.7 through 215.9.

§215.12 Advertising costs.

All advertising costs, publication fees, expenses incurred for abstracts of lease title, and other expenses incurred in connection with the advertising and sale of leases and in connection with the execution of lease contracts shall be borne by the lessee. In the event a lease of the land is offered to the highest bidder and he fails or refuses to execute such lease when duly notified and as required by or under the regulations in this part, and no other bid is accepted, such costs, fees, and expenses shall be paid from such money as he may have paid with his bid. If no bid is tendered after a tract is advertised, or if all bids are refused, said items of expenses shall be charged to the Indian owner of the land and be paid by him or be paid by the superintendent from any funds held by such superintendent to the credit of such Indian owner of the land.

§215.13 Bond.

Every mineral lease made and entered into under the regulations in this part, by an Indian or by the superintendent as his representative or in his behalf, must be accompanied by a surety bond, executed by the lessee and by a responsible surety company or two or more satisfactory sureties, guaranteeing the payment of all deferred installments of bonus and the payment of all specified royalties and rentals and the performance of all covenants and agreements undertaken by the lessee. Such bonds, unless authorized by the Secretary of the Interior or his authorized representative, with the consent of the Indian landowner, shall be not less than the following amounts:

For less than 80 acres—\$2,500

For 80 acres and less than 120 acres—3,500  
For 120 acres or more—5,000

*Provided, however,* That the lessee may, in lieu of such surety bond and upon execution of a proper penal bond to the United States in the sum prescribed and a proper power of attorney to the Secretary of the Interior, submit therewith United States bonds or notes in the aggregate sum prescribed as security for the carrying out of the terms, conditions, and provisions of the lease: *Provided further,* That a lessee may file in lieu of such individual lease bonds, one bond in a sum to be fixed by the Secretary of the Interior covering all leases to which he is or may become a party. The right is specifically reserved to the Secretary of the Interior to require an increase of the amount of any bond above the sum named in any particular case where he deems it necessary to require such increased bond.

[26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

§215.14 Payments to be made to superintendent.

No bonus, rents, royalties, nor other payments accruing under any mineral lease executed in accordance with or subject to the regulations in this part and approved by the Secretary of the Interior shall be paid direct to the Indian lessor; but all such bonus, rents, royalties, and other payments accruing under any such lease shall be paid to the superintendent for the benefit of the Indian lessors, to be deposited by that officer to the credit of the superintendent in some bank designated for the deposit of individual Indian moneys.

§215.15 Leases to be accompanied by Form D.

Lead and zinc leases should be accompanied, when filed, with application for approval (Form D)<sup>1</sup> made under oath, and said application shall set forth the information therein required.

<sup>1</sup>For further information concerning forms, see §215.19.

**§ 215.16 Requirements of corporate lessees.**

(a) When the lessee is a corporation, its first application must be accompanied by a sworn statement of its proper officers showing:

(1) The total number of shares of the capital stock actually issued and, specifically, the amount of cash paid into the treasury on each share sold; or, if paid in property, state kind, quantity, and value of the same paid per share.

(2) Of the stock sold how much per share remains unpaid and subject to assessment.

(3) How much cash the company has in its treasury and elsewhere and from what source it was received.

(4) What property, exclusive of cash, is owned by the company and its value.

(5) What the total indebtedness of the company is, and, specifically, the nature of its obligations.

(b) Subsequent applications of the corporation should show briefly the aggregate amounts of assets and liabilities.

**§ 215.17 Additional information required.**

Corporations, with their first application, must file one certified copy of articles of incorporation and, if a foreign corporation, evidence showing compliance with local corporation laws; also a list showing officers and stockholders, with post-office addresses and number of shares held by each. Statements of any changes of officers or any changes or additions of stockholders must be furnished to the Indian superintendent on January 1 of each year and at any time when requested. The right is reserved to the Secretary of the Interior to require of individual stockholders affidavits setting forth in what companies or with what persons or firms they are interested in lead and zinc mining leases, or land under the jurisdiction of the Quapaw Indian Agency, and whether they hold such stock for themselves or in trust. Evidence must also be given in a single affidavit (Form I) by the Secretary of the company or by the president of said company, showing authority of the officers of the company to execute the lease, bond, and other papers.

**§ 215.18 Term of leases.**

The term of lead and zinc mining leases executed pursuant to acts of Congress and under the regulations in this part shall be for such period of time as may be determined in each case by the Secretary of the Interior, but in no case shall a lease be made to extend beyond the restriction or trust period on the lands covered by such lease.

**§ 215.19 Forms.<sup>2</sup>**

Application, leases, and other papers must be upon forms prescribed by the Secretary of the Interior. Except as may be otherwise provided and required by the Secretary of the Interior, the leases and other papers required under the regulations in this part shall be in conformity with the forms designated, respectively, as follows:

Form A. Lease of Quapaw Indian land.

Form B. For lease of Indian land other than Quapaw.

Form C. Application by Indian.

Form D. Application for approval of lease.

Form E. Affidavit of lessor (or of superintendent acting for him) and affidavit of lessee.

Form F. Surety bond.

Form G. Affidavit of surety on personal bond.

Form H. Certificate as to sufficiency of surety on personal bond.

Form I. Affidavit as to authority of officers of corporation to execute lease and other papers.

Form J. Penal bond (in lieu of surety bond), and accompanying power of attorney.

Form K. Assignment of lead and zinc lease.

**§ 215.20 Assignment.**

Leases granted or approved under the regulations in this part may be assigned and the leased premises may be subleased or sublet, but only with the consent and authority of the Secretary of the Interior and subject to his approval as to the terms and conditions of such assignments, sublease, and subletting contracts and not otherwise, and provided also that the proposed assignees, sublessee, or sublettee shall be qualified to hold such lease under the regulations in this part and shall furnish such bond as may be required by

<sup>2</sup>Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

the Secretary of the Interior, such bond to be with responsible surety to the satisfaction of the Secretary of the Interior and conditioned for the faithful performance of the covenants and conditions of the lease. Upon the filing with the Indian agent of such assignment, financial statement, and bond, the said agent shall at once give notice in writing to all restricted Indian owners of said land, advising them of said proposed assignment, and that if they have any bona fide objections to same, such objections must be filed in writing within 10 days from the date of said notice.

**§215.21 Payment of gross production tax on lead and zinc.**

The superintendent of the Quapaw Indian Agency is hereby authorized and directed to pay at the appropriate times, from the respective individual Indian funds held under his supervision, such gross production tax due the State on production of lead and zinc from restricted lands under his jurisdiction as may be properly assessed under provisions of law against the royalty interests of the respective Indian owners in the mineral produced from their lands.

**§215.22 Operations.**

(a) All shafts shall be securely cribbed to a point at least 8 inches above the immediate surrounding surface and cribbing shall be maintained in good condition during the life of the mining lease: *Provided, however,* That at any time shafts may be permanently sealed by a reinforced concrete slab after first obtaining the written approval of the duly authorized representative of the Department of the Interior. The slab shall be so placed as to prevent caving of the ground around the shaft collar.

(b) All shafts, prior to the expiration, surrender, or upon cancellation of the mining lease or abandonment of the property, shall be permanently sealed so as to prevent the caving of the ground around the shaft collar: *Provided, however,* That this requirement may be waived after first obtaining the written consent of the duly authorized representative of the Department of the Interior.

(c) All shaft entrances not permanently sealed shall be so fenced, boxed, or covered as to prevent persons or animals from falling into the mine when the shaft is not in actual use, and such fencing, boxing, or covering shall be maintained in good condition during the life of the mining lease.

(d) All shafts where hoisting is done shall be boxed or fenced on three sides and the fourth side equipped with a gate which shall be kept closed when access to the shaft is not necessary.

(e) All churn drill holes shall be securely plugged to the surface unless used for ventilation or other mining purposes, in which case they shall be cased or otherwise prevented from caving or becoming a hazard to persons or animals. If cased, the casing shall extend 4 feet above the collar of the hole.

**§215.23 Cooperation between superintendent and district mining supervisor.**

(a) The district mining supervisor of the Miami field office, Geological Survey, directly or through his assistants, shall receive from lessees for the superintendent, all notices, reports, drill logs, maps, and records, and all other information relating to mining operations required by said regulations to be submitted by lessees, and shall maintain a file thereof for the superintendent.

(b) The files of the Geological Survey supervisor relating to lead and zinc leases of Quapaw Indian lands shall be at all times available for inspection and use by authorized employees of the Bureau of Indian Affairs, and the employees of the Geological Survey assigned to work relating to Indian lands shall furnish to authorized employees of the Bureau of Indian Affairs such information and technical advice as may be necessary or appropriate to the most efficient cooperation in the conduct of the work assigned to the two bureaus. Likewise, similar facilities and service shall be provided for the benefit of the authorized employees of the Geological Survey by the Bureau of Indian Affairs.

(c) No orders of any kind will be issued by Geological Survey representatives to any Indian, but such representatives shall have full authority

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to issue and amend orders to operators relative to production and operations: i.e., the supervision of all operations, including safety and efficiency, health and sanitation, and prevention of material or economic waste, such orders to be prepared with the advice of the local representative of the Bureau of Indian Affairs.

CROSS REFERENCE: For regulations of the Geological Survey, see 30 CFR chapter II.

§ 215.23a Suspension of operations and production on leases for minerals other than oil and gas.

The provisions of § 212.15a of this subchapter are applicable to leases under this part.

[24 FR 9511, Nov. 26, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 215.24 Books and accounts.

(a) The lessee shall maintain books in which shall be kept a correct account of all ore and rock mined on the tract, of all ore put through the mill, of all lead and zinc concentrates produced, and of all ore and concentrates sold and to whom sold, the weight, assay value, moisture content, base price, dates, penalties, and price received, and the percentage of lead and zinc recovered. A correct statement of the same for each month shall be furnished the office of the district mining supervisor pursuant to § 215.23 not later than 15 days after the first of each month for the preceding month, together with a certificate from the smelter showing the unit price paid for the mineral purchased and the amount of ore and concentrates purchased during the month from said land.

(b) An audit of the lessee's accounts and books shall be made semiannually, or at such other times as may be directed by the Secretary of the Interior, by certified public accountants, approved by the Secretary, and at the expense of the lessee. The lessee shall furnish free of cost a copy of such semiannual or other audit, through the office of the district mining supervisor pursuant to § 215.23, within 30 days after the completion of each auditing.

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§ 215.25 Other minerals and deep-lying lead and zinc minerals.

Except as provided in § 215.6(b), leases on Quapaw Indian lands, for mining minerals other than lead and zinc and for lead and zinc and associated minerals below the horizon of the rock stratum known as the Reed Springs Formation, shall be made pursuant to the provisions of part 212 of this subchapter.

[26 FR 1910, Mar. 4, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 216—SURFACE EXPLORATION, MINING, AND RECLAMATION OF LANDS

Subpart A—General Provisions

Sec.

- 216.1 Purpose.
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AUTHORITY: 34 Stat. 539, 35 Stat. 312; 25 U.S.C. 355 NT; 35 Stat 781; 25 U.S.C. 396; sec. 1, 49 Stat. 1250; 25 U.S.C. 473a; 49 Stat. 1967, 25 U.S.C. 501, 502; 52 Stat. 347, 25 U.S.C. 396a-f; 5 U.S.C. 301.

Subpart A—General Provisions

SOURCE: 34 FR 813, Jan. 18, 1969, unless otherwise noted. Redesignated at 42 FR 63394, Dec. 16, 1977; and further redesignated at 47 FR 13327, Mar. 30, 1982.

§ 216.1 Purpose.

It is the policy of this Department to encourage the development of the mineral resources underlying Indian lands where mining is authorized. However, interest of the Indian owners and the public at large requires that, with respect to the exploration for, and the

surface mining of, such minerals, adequate measures be taken to avoid, minimize, or correct damage to the environment—land, water, and air—and to avoid, minimize, or correct hazards to the public health and safety. The regulations in this part prescribe procedures to that end.

### §216.2 Scope.

(a) Except as provided in paragraph (b) of this section, the regulations in this part provide for the protection and conservation of nonmineral resources during operations for the discovery, development, surface mining, and onsite processing of minerals under permits or leases issued pursuant to statutes pertaining to Indian lands including but not limited to the following statutes or amendments thereto:

The Act of June 28, 1906 (34 Stat. 539);

The Act of May 27, 1908 (35 Stat. 312);

The Act of March 3, 1909 (35 Stat. 781, 25 U.S.C. 396);

The Act of May 1, 1936 (49 Stat. 1250);

The Act of June 26, 1936 (49 Stat. 1967);

The Act of May 11, 1939 (52 Stat. 347, 25 U.S.C. 396a-f, and 5 U.S.C. 301).

(b) The regulations in this part do not cover the exploration for oil and gas or the issuance of leases, or operations thereunder, nor minerals underlying lands, the surface of which is not owned by the owner of the minerals.

(c) The regulations in this part shall apply only to permits or leases issued subsequent to the date on which these regulations become effective and which are subject to the approval of the Secretary of the Interior or his designated representative.

### §216.3 Definitions.

As used in the regulations in the part:

(a) *Superintendent* means the superintendent or other officer of the Bureau of Indian Affairs having jurisdiction under delegated authority, over the lands involved.

(b) *Mining supervisor* means the Regional Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on the land covered by a permit or lease.

(c) *Overburden* means all the earth and other materials which lie above a natural deposit of minerals and such earth and other materials after removal from their natural state in the process of mining.

(d) *Area of land to be affected or area of land affected* means the area of land from which overburden is to be or has been removed and upon which the overburden or waste is to be or has been deposited, and includes all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to an operation and for haulage.

(e) *Operation* means all of the premises, facilities, roads, and equipment used in the process of determining the location, composition or quality of a mineral deposit, or in developing, extracting, or onsite processing of a mineral deposit in a designated area.

(f) *Method of operation* means the method or manner by which a cut or open pit is made, the overburden is placed or handled, water is controlled or affected and other acts performed by the operator in the process of exploring or uncovering and removing or onsite processing of a mineral deposit.

(g) *Holder or operator* means the permittee or lessee designated in a permit or lease.

(h) *Reclamation* means measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

### §216.4 Technical examination of prospective surface exploration and mining operations.

(a)(1) In connection with an application for a permit or lease, the superintendent shall make, or cause to be made, a technical examination of the prospective effects of the proposed exploration or surface mining operations upon the environment. The technical examination shall take into consideration the need for the preservation and protection of other resources, including cultural, recreational, scenic, historic, and ecological values; and control of

erosion, flooding, and pollution of water; the isolation of toxic materials; the prevention of air pollution; the reclamation by revegetation, replacement of soil or by other means, of lands affected by the exploration or mining operations; the prevention of slides; the protection of fish and wildlife and their habitat; and the prevention of hazards to public health and safety.

(2) A technical examination of an area should be made with the recognition that actual potential mining sites and mining operations vary widely with respect to topography, climate, surrounding land uses, proximity to densely used areas, and other environmental influences and that mining and reclamation requirements should provide sufficient flexibility to permit adjustment to local conditions.

(b) Based upon the technical examination, the superintendent shall formulate the general requirements which the applicant must meet for the protection of nonmineral resources during the conduct of exploration or mining operations and for the reclamation of lands or waters affected by exploration or mining operations. The general requirements shall be made known in writing to the applicant before the issuance of a permit or lease and upon acceptance thereof by the applicant, shall be incorporated in the permit or lease.

(c) In each instance in which an application is made the mining supervisor shall participate in the technical examination and in the formulation of the general requirements.

(d) The superintendent may prohibit or otherwise restrict operations on any part of an area whenever it is determined that such part of the area described in an application for a permit or lease is such that previous experience under similar conditions has shown that operations cannot feasibly be conducted by any known methods or measures to avoid—

(1) Rock or landslides which would be a hazard to human lives or endanger or destroy private or public property; or

(2) Substantial deposition of sediment and silt into streams, lakes, reservoirs; or

(3) A lowering of water quality below standards established by the appro-

priate State water pollution control agency, or by the Secretary of the Interior, or his authorized representative; or

(4) A lowering of the quality of waters whose quality exceeds that required by the established standards—unless and until it has been affirmatively demonstrated to the Secretary of the Interior, or his authorized representative, that such lowering of quality is necessary to economic and social development and will not preclude any assigned uses made of such waters; or

(5) The destruction of key wildlife habitat or important scenic, historical, or other natural or cultural features.

(e) If, on the basis of a technical examination, the superintendent determines that there is a likelihood that there will be a lowering of water quality as described in paragraphs (d) (3) and (4) of this section caused by the operation, no lease or permit shall be issued until after consultation with the Federal Water Pollution Control Administration and a finding by the Administration that the proposed operation would not be in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or of Executive Order No. 11288 (31 FR 9261). Where a permit or lease is involved the Superintendent's determination shall be made in consultation with the mining supervisor.

**§ 216.5 Basis for denial of a permit or lease.**

An application for a permit or lease to conduct exploratory or mining operations may be denied any applicant who has forfeited a required bond because of failure to comply with a mining plan. However, a permit or lease may not be denied an applicant because of the forfeiture of a bond if the lands disturbed under his previous permit or lease have subsequently been reclaimed without cost to the lessor or the United States.

**§ 216.6 Approval of exploration plan.**

(a) Before commencing any surface disturbing operations to explore, test or prospect for minerals, the operator shall file with the mining supervisor a plan for the proposed exploration operations. The mining supervisor shall

consult with the superintendent with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending upon the size and nature of the operation and the requirements established pursuant to §216.4 the mining supervisor may require that the exploration plan submitted by the operator include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Two copies of a suitable map or aerial photograph showing topographic, cultural and drainage features;

(3) A statement of proposed exploration methods; i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(c) The mining supervisor shall promptly review the exploration plan submitted to him by the operator and shall indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to §216.4, the provisions of these regulations, and the terms of the permit.

(d) The operator shall comply with the provisions of an approved exploration plan. The mining supervisor may, with respect to such a plan, exercise the authority provided by paragraphs (f) and (g) of §216.7 respecting a mining plan.

#### **§216.7 Approval of mining plan.**

(a) Before surface mining operations may commence under any permit or lease, the operator must file a mining plan with the mining supervisor and obtain his approval of the plan. The mining supervisor shall consult with the superintendent with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending on the size and nature of the operation and the requirements established pursuant to §216.4 the min-

ing supervisor may require that the mining plan submitted by the operator include any or all of the following:

(1) A description of the location and area to be affected by the operations;

(2) Two copies of a suitable map, or aerial photograph showing the topography, the area covered by the permit or lease, the name and location of major topographic and cultural features, and the drainage plan away from the area affected;

(3) A statement of proposed methods of operating, including a description of proposed roads or vehicular trails; the size and location of structures and facilities to be built;

(4) An estimate of the quantity of water to be used and pollutants that are expected to enter any receiving waters;

(5) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings so as to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(6) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife, and hazards to public health and safety; and

(7) A statement of the proposed manner and time of performance of work to reclaim areas disturbed by the holder's operation.

(c) In those instances in which the permit or lease requires the revegetation of an area of land to be affected, the mining plan shall show:

(1) Proposed methods of preparation and fertilizing the soil prior to replanting;

(2) Types and mixtures of shrubs, trees, or tree seedlings, grasses or legumes to be planted; and

(3) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees, or tree seedlings, or combinations of grasses and trees.

(d) In those instances in which the permit or lease requires regrading and backfilling, the mining plan shall show the proposed methods and the timing of grading and backfilling of areas of land to be affected by the operation.

(e) The mining supervisor shall review the mining plan submitted to him by the operator and shall promptly indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to §216.4, the provisions of these regulations and the terms of the permit or lease. The operator shall comply with the provisions of an approved mining plan.

(f) A mining plan may be changed by mutual consent of the mining supervisor and the operator at any time to adjust to changed conditions or to correct any oversight. To obtain approval of a change or supplemental plan, the operator shall submit a written statement of the proposed changes or supplement and the justification for the changes proposed. The mining supervisor shall promptly notify the operator that he consents to the proposed changes or supplement, or in the event he does not consent, he shall specify the modifications thereto under which the proposed changes or supplement would be acceptable. After mutual acceptance of a change of a plan, the operator shall not depart therefrom without further approval.

(g) If circumstances warrant or if development of a mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

**§216.8 Performance bond.**

(a) Upon approval of an exploration plan or mining plan, the operator shall be required to file a suitable performance bond of not less than \$2,000 with satisfactory surety, payable to the Secretary of the Interior, and the bond shall be conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended or supplemented. The bond shall be in an amount sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an ap-

proved partial or supplemental plan. In determining the amount of the bond consideration shall be given to the character and nature of the reclamation requirements and the estimated costs of reclamation in the event that the operator forfeits his performance bond. In lieu of a surety bond an operator may elect to deposit cash or negotiable bonds of the U.S. government. The cash deposit or the market value of such securities shall be equal at least to the required sum of the bond.

(b) In a particular instance where the circumstances are such as to warrant an exception, the amount of the bond for a particular operation may be reduced to less than the required minimum of \$2,000.

(c) The superintendent shall set the amount of a bond and take the necessary action for an increase or for a complete or partial release of a bond. He shall take action with respect to bonds for leases or permits only after consultation with the mining supervisor.

**§216.9 Reports.**

(a) Within 30 days after the end of each calendar year, or if operations cease before the end of a calendar year, within 30 days after the cessation of operations, the operator shall submit an operations report to the mining supervisor containing the following information:

(1) An identification of the permit or lease and the location of the operation.

(2) A description of the operations performed during the period of time for which the report is filed.

(3) An identification of the area of land affected by the operations and a description of the manner in which the land has been affected.

(4) A statement as to the number of acres disturbed by the operations and the number of acres which were reclaimed during the period of time.

(5) A description of the method utilized for reclamation and the results thereof.

(6) A statement and description of reclamation work remaining to be done.

(b) Upon completion of such grading and backfilling as may be required by an approved exploration or mining

plan, the operator shall make a report thereon to the mining supervisor and request inspection for approval. Whenever it is determined by such inspection that backfilling and grading have been carried out in accordance with the established requirements and approved exploration or mining plan, the superintendent shall issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that satisfactory planting, if required, is carried out.

(c)(1) Whenever planting is required by an approved exploration or mining plan, the operator shall file a report with the superintendent whenever such planting is completed. The report shall—

- (i) Identify the permit or lease;
- (ii) Show the type of planting or seeding, including mixtures and amounts;
- (iii) Show the date of planting or seeding;
- (iv) Identify or describe the areas of the lands which have been planted;
- (v) Contain such other information as may be relevant.

(2) The superintendent, as soon as possible after the completion of the first full growing season, shall make an inspection and evaluation of the vegetative cover and planting to determine if a satisfactory growth has been established.

(3) If it is determined that a satisfactory vegetative cover has been established and is likely to continue to grow, any remaining portion of the surety bond may be released if all requirements have been met by the operator.

(d)(1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall report to the mining supervisor his intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his operations, the extent of reclamation accomplished and other relevant information.

(2) Upon receipt of such report an inspection shall be made to determine whether operations have been carried out in accordance with the approved exploration or mining plan.

**§ 216.10 Inspection: Notice of non-compliance: Revocation.**

(a) The mining supervisor and superintendent shall have the right to enter upon the lands under a permit or lease, at any reasonable time, for the purpose of inspection or investigation to determine whether the terms and conditions of the permit or lease and the requirements of the exploration or mining plan have been complied with.

(b) If the mining supervisor determines that an operator has failed to comply with the terms and conditions of a permit or lease, or with the requirements of an exploration or mining plan, or with the provisions of applicable regulations, the superintendent shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address.

(c) A notice of noncompliance shall specify in what respects the operator has failed to comply with the terms and conditions of a permit or lease or the requirements of an exploration or mining plan, or the provisions of applicable regulations, and shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(d) Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor of operations or for the initiation of action for the cancellation of the permit or lease and for forfeiture of the surety bond required under § 216.8.

**§ 216.11 Appeals.**

An applicant, permittee, lessee, or lessor aggrieved by a decision or order of a mining supervisor or superintendent may appeal such decision or order. An appeal from a decision or order of a superintendent shall be made pursuant to 25 CFR part 2. An appeal from a decision or order of a mining supervisor shall be made pursuant to 30 CFR parts 211 and 231.

**§ 216.12 Consultation.**

A superintendent shall consult with the Indian landowner with respect to

actions he proposes to take under §§ 216.4, 216.6, 216.7, 216.9, and 216.10.

**PART 217—MANAGEMENT OF TRIBAL ASSETS OF UTE INDIAN TRIBE, UINTAH AND OURAY RESERVATION, UTAH, BY THE TRIBE AND THE UTE DISTRIBUTION CORP.**

Sec.

217.1 Definitions.

217.2 Authority and purpose.

217.3 Referral of questions by superintendent.

217.4 Referral of questions by the joint managers.

217.5 Management decisions.

217.6 Method of casting votes.

217.7 Implementation of decision.

**AUTHORITY:** Secs. 27 and 28 of the Act of August 27, 1954, 68 Stat. 868 (25 U.S.C. 677-677aa); 5 U.S.C. 301; secs. 463, 465 of the Revised Statutes (25 U.S.C. 2 and 9) and 230 DM 1 and 2.

**SOURCE:** 43 FR 40458, Sept. 12, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§217.1 Definitions.**

As used in this part:

*Assets* means all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets of the Ute Tribe of Uintah and Ouray Reservation as constituted on August 27, 1954, not distributed in accordance with the terms of the Ute Partition Act.

*Business Committee* means the Uintah and Ouray Tribal Business Committee, created pursuant to the provisions of the constitution and bylaws of the Ute Indian Tribe of the Uintah and Ouray Reservation.

*Board of directors* means the board of directors of the Ute Distribution Corp., a corporation organized and existing under the laws of the State of Utah.

*Joint manager* or *joint managers* means the business committee and the board of directors, or either of them, as is appropriate, within the context where one of those terms is used.

*Superintendent* means the superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs.

*Secretary* means the secretary of the Interior or a subordinate official acting pursuant to authority delegated by said Secretary.

**§217.2 Authority and purpose.**

In accordance with the Ute Partition Act approved August 27, 1954 (68 Stat. 868; 25 U.S.C. 677-677aa), as amended by the Act of August 2, 1956 (70 Stat. 936), and the Act of September 25, 1962 (76 Stat. 597), assets shall be managed jointly by the business committee and the board of directors. These regulations set out the procedures for exercising such joint management.

**§217.3 Referral of questions by superintendent.**

The superintendent shall refer all questions and problems related to the management of the assets as they come to his attention, together with his analysis of alternative solutions to each question or problem, to the business committee and to the board of directors for resolution. Such referrals shall be in writing and shall be addressed to the joint managers at such addresses as they furnish to the superintendent and to each other from time to time.

**§217.4 Referral of questions by the joint managers.**

The business committee and the board of directors must refer to each other for resolution any questions or problems related to joint management of the assets which they from time to time determine need to be resolved together with the submitting party's proposal, if any, for solution. Such referrals shall be in writing, addressed to the other joint manager at the address furnished in accordance with §217.3 of this part. Copies of all such referrals shall also be furnished to the superintendent. Either of the parties may request an analysis of alternative solutions of each question or problem referred pursuant to this section, and the superintendent will furnish such analysis within ten working days, or within such longer period as he may notify the parties is required to prepare such analysis.

**§217.5 Management decisions.**

In arriving at management decisions concerning the assets, the business committee shall be entitled to cast 72.83814 votes and the board of directors shall be entitled to cast 27.16186 votes.

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Any total number of votes cast exceeding 50 shall be sufficient to determine an issue submitted to the joint managers for resolution. A majority of votes cast will decide an issue.

### §217.6 Method of casting votes.

Within 30 days after an issue and any analysis provided for in §§217.4 and 217.5 have been submitted to the joint managers for resolution, they shall each notify the superintendent in writing of the number of votes cast for and against the proposed or alternative solutions. If either of the joint managers fails or refuses to cast his votes and to notify the superintendent thereof within the time specified, the superintendent may conclude that such joint managers' votes have been cast against the proposed solution or solutions; or, if no solutions have been proposed, for the maintenance of the status quo. At the time they notify the superintendent of the votes cast on an issue, each joint manager shall furnish to the superintendent a certified copy of a resolution of the business committee or the board of directors, as the case may be, authorizing such vote.

### §217.7 Implementation of decision.

The Secretary shall issue such documents as are necessary or expeditious to implement the decisions of the joint managers, insofar as such issuance is authorized by law, and he shall execute and/or approve such documents for and on behalf of the joint managers, or either of them, and on behalf of the United States, as necessary. If it becomes necessary for the Secretary to execute an instrument on behalf of one or both of the joint managers and to approve the same instrument as trustee, two different officials having delegated authority from the Secretary shall serve as executing and approving officers, respectively.

## PART 225—OIL AND GAS, GEOTHERMAL, AND SOLID MINERALS AGREEMENTS

### Subpart A—General

Sec.

- 225.1 Purpose and scope.
- 225.2 Information collection.

- 225.3 Definitions.
- 225.4 Authority and responsibility of the Bureau of Land Management (BLM).
- 225.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).
- 225.6 Authority and responsibility of the Minerals Management Service (MMS).

### Subpart B—Minerals Agreements

- 225.20 Authority to contract.
- 225.21 Negotiation procedures.
- 225.22 Approval of minerals agreements.
- 225.23 Economic assessments.
- 225.24 Environmental studies.
- 225.25 Resolution of disputes.
- 225.26 Auditing and accounting.
- 225.27 Forms and reports.
- 225.28 Approval of amendments to minerals agreements.
- 225.29 Corporate qualifications and requests for information.
- 225.30 Bonds.
- 225.31 Manner of payments.
- 225.32 Permission to start operations.
- 225.33 Assignment of minerals agreements.
- 225.34 [Reserved]
- 225.35 Inspection of premises; books and accounts.
- 225.36 Minerals agreement cancellation; Bureau of Indian Affairs notice of non-compliance.
- 225.37 Penalties.
- 225.38 Appeals.
- 225.39 Fees.
- 225.40 Government employees cannot acquire minerals agreements.

AUTHORITY: Indian Mineral Development Act of 1982, 25 U.S.C. 2101-2108; and 25 U.S.C. 2 and 9.

SOURCE: 59 FR 14971, Mar. 30, 1994, unless otherwise noted.

### Subpart A—General

#### §225.1 Purpose and scope.

(a) The regulations in this part, administered by the Bureau of Indian Affairs under the direction of the Secretary of the Interior, govern minerals agreements for the development of Indian-owned minerals entered into pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. 2101-2108 (IMDA). These regulations are applicable to the lands or interests in lands of any Indian tribe, individual Indian or Alaska native the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. These regulations are intended to ensure that

Indian mineral owners are permitted to enter into minerals agreements that will allow the Indian mineral owners to have more responsibility in overseeing and greater flexibility in disposing of their mineral resources, and to allow development in the manner which the Indian mineral owners believe will maximize their best economic interest and minimize any adverse environmental or cultural impact resulting from such development. Pursuant to section 4 of the IMDA (25 U.S.C. 2103(e)), as part of this greater flexibility, where the Secretary has approved a minerals agreement in compliance with the provisions of 25 U.S.C. chap. 23 and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such minerals agreement. However, as further stated in the IMDA, the Secretary continues to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any minerals agreement, and to uphold the duties of the United States as derived from the trust relationship and from any treaties, executive orders, or agreements between the United States and any Indian tribe.

(b) The regulations in this part shall become effective and in full force on April 29, 1994, and shall be subject to amendment at any time by the Secretary; *Provided*, that no such regulation that becomes effective after the date of approval of any minerals agreement shall operate to affect the duration of the minerals agreement, the rate of royalty or financial consideration, rental, or acreage unless agreed to by all parties to the minerals agreement.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 225.4, 225.5, and 225.6 are supplemental to these regulations, and apply to minerals agreements for development of Indian mineral resources unless specifically stated otherwise in this part or in other Federal regulations. To the extent the parties to a minerals agreement are able to provide reasonable

provisions satisfactorily addressing the issues of valuation, method of payment, accounting, and auditing, governed by the Minerals Management Service regulations, the Secretary may approve alternate provisions in a minerals agreement.

(d) Nothing in these regulations is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, or minerals operations within their territorial jurisdiction.

#### § 225.2 Information collection.

It has been determined by the Office of Management and Budget that the Information Collection Requirements contained in part 225 do not require review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### § 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated.

*Area Director* means the Bureau of Indian Affairs Official in charge of an Area Office.

*Assistant Secretary—Indian Affairs* means the Assistant Secretary—Indian Affairs of the Department of the Interior, a designee of the Secretary of the Interior who may be specifically authorized by the Secretary to disapprove minerals agreements (25 U.S.C. 2103(d)) and to issue orders of cessation and/or minerals agreement cancellations as final orders of the Department.

*Authorized Officer* means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3180, 3260, 3280, 3480 and 3590.

*Director's Representative* means the Office of Surface Mining Reclamation and Enforcement Director's Representative authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR part 750 and 25 CFR part 216.

*Gas* means any fluid, either combustible or noncombustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

*Geothermal resources* means: (1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

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

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

(4) Any by-product derived therefrom.

*In the best interest of the Indian mineral owner* refers to the standards to be applied by the Secretary in considering whether to take administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a minerals agreement or a unitization or communitization agreement) the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects.

*Indian lands* means any lands or interests in lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

*Indian mineral owner* means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns a mineral interest in oil and gas, geothermal resources or solid minerals, title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

*Indian surface owner* means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns the surface estate in land the title to which is held in trust by the United States or is subject to a

restriction against alienation imposed by the United States.

*Indian tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

*Individual Indian* means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

*Minerals* includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

*Minerals agreement* means any joint venture, operating, production sharing, service, managerial, lease (other than a lease entered into pursuant to the Act of May 11, 1938, or the Act of March 3, 1909), contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing, or other development of minerals in which an Indian mineral owner owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such minerals.

*Minerals Management Service official* means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

*Mining* means the science, technique, and business of mineral development, including, but not limited to: opencast work, underground work, in-situ leaching, or other methods directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such a

mineral exceeds 5,000 cubic yards in any given year.

*Oil* means all non-gaseous hydrocarbon substances other than coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

*Operator* means a person, proprietorship, partnership, corporation, or other business entity that has entered into an approved minerals agreement under the authority of the Indian Mineral Development Act of 1982, or who has been assigned an obligation to make royalty or other payments required by the minerals agreement.

*Secretary* means the Secretary of the Interior or an authorized representative, except that as used in §225.22 (e) and (f) the authorized representative may only be the Assistant Secretary for Indian Affairs (25 U.S.C. 2103(d)).

*Solid minerals* means all minerals excluding oil, gas, and geothermal resources.

*Superintendent* means the Bureau of Indian Affairs official in charge of an agency office.

**§225.4 Authority and responsibility of the Bureau of Land Management (BLM).**

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas Unit Agreements: Unproven Areas, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations. These functions include, but are not limited to, resource evaluation, approval of drilling permits, approval of mining, reclamation, and production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, as amended, apply to minerals agreements approved under this part.

**§225.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).**

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). The relevant regulations for surface mining and reclamation operations are found in 30 CFR part 750 and 25 CFR part 216. These regulations, as amended, apply to minerals agreements approved under this part.

**§225.6 Authority and responsibility of the Minerals Management Service (MMS).**

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C. These regulations, unless specifically stated otherwise in this part or in other regulations, apply to all minerals agreements approved under this part. To the extent the parties to a minerals agreement are able to provide reasonable provisions satisfactorily addressing the issues or functions governed by the MMS regulations relating to valuation of mineral product, method of payment, accounting procedures, and auditing procedures, the Secretary may approve alternate provisions in a minerals agreement.

**Subpart B—Minerals Agreements**

**§225.20 Authority to contract.**

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to mineral resources in which the tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in mineral resources may include those resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that inclusion of the resources is in the best interest of the individual Indian mineral owner.

**§ 225.21 Negotiation procedures.**

(a) An Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process. The Secretary shall provide advice, assistance, and information to the extent allowed by available resources.

(b) No particular form of minerals agreement is prescribed. In preparing the minerals agreement the Indian mineral owner shall, if applicable, address provisions including, but not limited to, the following:

(1) A general statement identifying the parties to the minerals agreement, the legal description of the lands, including, if applicable, rock intervals or thicknesses subject to the minerals agreement, and the purposes of the minerals agreement;

(2) A statement setting forth the duration of the minerals agreement;

(3) A statement providing indemnification to the Indian mineral owner(s) and the United States from all claims, liabilities and causes of action that may be made by persons not a party to the minerals agreement;

(4) Provisions setting forth the obligations of the contracting parties;

(5) Provisions describing the methods of disposition of production;

(6) Provisions outlining the method of payment and amount of compensation to be paid;

(7) Provisions establishing accounting and mineral valuation procedures;

(8) Provisions establishing operating and management procedures;

(9) Provisions establishing any limitations on assignment of interests, including any right of first refusal by the Indian mineral owner in the event of a proposed assignment;

(10) Bond requirements;

(11) Insurance requirements;

(12) Provisions establishing audit procedures;

(13) Provisions for resolving disputes;

(14) A force majeure provision;

(15) Provisions describing the rights of the parties to terminate or suspend the minerals agreement, and the procedures to be followed in the event of termination or suspension;

(16) Provisions describing the nature and schedule of the activities to be conducted by the parties;

(17) Provisions describing the proposed manner and time of performance of future abandonment, reclamation and restoration activities;

(18) Provisions for reporting production and sales;

(19) Provisions for unitizing or communitizing of lands included in a minerals agreement for the purpose of promoting conservation and efficient utilization of natural resources;

(20) Provisions for protection of the minerals agreement lands from drainage and/or unauthorized taking of mineral resources; and

(21) Provisions for record keeping.

(c) In order to avoid delays in obtaining approval, the Indian mineral owner is encouraged to confer with the Secretary prior to formally executing the minerals agreement, and seek advice as to whether the minerals agreement appears to satisfy the requirements of § 225.22, or whether additions or corrections may be required in order to obtain Secretarial approval.

(d) The executed minerals agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the minerals agreement, shall be forwarded by the tribal representative to the appropriate Superintendent, or in the absence of a Superintendent to the Area Director, for approval.

**§ 225.22 Approval of minerals agreements.**

(a) A minerals agreement submitted for approval pursuant to § 225.21(d) shall be approved or disapproved within:

(1) One hundred and eighty (180) days after submission, or

(2) Sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later.

(b) At least thirty (30) days prior to approval or disapproval of any minerals agreement, the affected Indian mineral owners shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove the minerals agreement.

(1) The written findings shall include an environmental study which meets the requirements of § 225.24 and an economic assessment, as described in § 225.23.

(2) The Secretary shall include in the written findings any recommendations for changes to the minerals agreement needed to qualify it for approval.

(3) The 30-day period shall commence to run as of the date the written findings are received by the Indian mineral owner.

(4) Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental study required by § 225.24) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement; the financial return to the Indian parties thereto; the extent, nature, value or disposition of the mineral resources; or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian mineral owners. The letter containing the written findings should be headed with: PRIVILEGED PROPRIETARY INFORMATION OF THE (names of Indian mineral owners).

(c) A minerals agreement shall be approved if, at the Secretary's discretion, it is determined that the following conditions are met:

(1) The minerals agreement is in the best interest of the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impacts sufficient to outweigh its expected benefits to the Indian mineral owners; and,

(3) The minerals agreement complies with the requirements of this part and all other applicable regulations and the provisions of applicable Federal law.

(d) The determinations required by paragraph (c) of this section shall be based on the written findings required by paragraph (b) and paragraphs (b)(1) through (b)(4), inclusive, of this section. The question of "best interest" within the meaning of paragraph (c)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other

information considered relevant by the Secretary, including, but not limited to, a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(e) If a Superintendent or Area Director believes that a minerals agreement should not be approved, a written statement of the reasons why the minerals agreement should not be approved shall be prepared and forwarded, together with the minerals agreement, the written findings required by paragraph (b) and subparagraphs (b)(1) through (b)(4), inclusive, of this section, and all other pertinent documents, to the Secretary for a decision with a copy to the affected Indian mineral owner.

(f) The Secretary shall review any minerals agreement referred with a recommendation that it be disapproved, and the Secretary's decision to disapprove a minerals agreement shall be deemed a final Federal agency action (25 U.S.C. 2103(d)).

#### **§ 225.23 Economic assessments.**

The Secretary shall prepare or cause to be prepared an economic assessment that shall address, among other things:

(a) Whether there are assurances in the minerals agreement that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on mineral resources is adequate; and

(c) Whether the minerals agreement is likely to provide the Indian mineral owner with a return on the production comparable to what the owner might otherwise obtain through competitive bidding, when such a comparison can reasonably be made.

#### **§ 225.24 Environmental studies.**

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ) found at 40 CFR parts 1500–1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593 (3 CFR 1971-1975 Comp., p. 559, May 13, 1971). If these surveys indicate that a mineral development will have an adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or that appropriate excavations or other related research is conducted; and

(3) Ensure that complete data describing the historic property is preserved.

#### **§ 225.25 Resolution of disputes.**

A minerals agreement shall contain provisions for resolving disputes that may arise between the parties. However, no such provision shall limit the Secretary's authority or ability to ensure that the rights of an Indian mineral owner are protected in the event of a violation of the provisions of the minerals agreement by any other party to the minerals agreement.

#### **§ 225.26 Auditing and accounting.**

The Secretary may conduct audits relating to the scope, nature and extent of compliance with the minerals agreement and with applicable regulations and orders to lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements arising from the provisions of a minerals agreement. Procedures and standards used for accounting and auditing of minerals agreements will be in accordance with audit standards established by the Comptroller General of the United States, in "Standards for Auditing of Governmental Organizations,

Programs, Activities, and Functions, 1981," and standards established by the American Institute of Certified Public Accountants.

#### **§ 225.27 Forms and reports.**

Any forms required to be filed pursuant to a minerals agreement may be obtained from the Superintendent or Area Director. Prescribed forms for filing geothermal production reports required by the BLM (43 CFR part 3260, §§ 3264.1, 3264.2-4 and 3264.2-5) may be obtained from the Superintendent, Area Director, or the Authorized Officer. Applicable reports required by the MMS shall be filed using the forms prescribed in 30 CFR part 210, which are available from MMS. Guidance on how to prepare and submit required information, collection reports, and forms to MMS is available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, P.O. Box 5760, Denver, Colorado 80217. Additional reporting requirements may be required by the Secretary.

#### **§ 225.28 Approval of amendments to minerals agreements.**

An amendment, modification or supplement to a minerals agreement entered into pursuant to the regulations in this part, whether the minerals agreement was approved before or after the effective date of these regulations, must be approved in writing by all parties before being submitted to the Secretary for approval. The provisions of § 225.22 apply to approvals of amendments, modifications, or supplements to minerals agreements entered into under the regulations in this part. However, amendments, modifications, or supplements that do not substantially alter or affect the factors listed in § 225.22(c), may be approved by referencing materials previously submitted for the initial review and approval of the minerals agreement. The Secretary may approve an amendment, modification, or supplement if it is determined that the underlying minerals agreement, as amended, modified, or supplemented meets the criteria for approval set forth in § 225.22(c).

**§ 225.29 Corporate qualifications and requests for information.**

(a) The signing in a representative capacity of minerals agreements or assignments, bonds, or other instruments required by a minerals agreement or these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such a capacity. An agent for a surety shall furnish a power of attorney.

(b) A prospective corporate operator proposing to acquire an interest in a minerals agreement shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and a notarized statement that the corporation is authorized to hold such interests in the State where the land described in the minerals agreement is situated; and

(2) A notarized statement that it has power to conduct all business and operations as described in the minerals agreement.

(c) The Secretary may, either before or after the approval of a minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

**§ 225.30 Bonds.**

(a) Bonds required by provisions of a minerals agreement should be in an amount sufficient to ensure compliance with all of the requirements of the minerals agreement and the statutes and regulations applicable to the minerals agreement. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a \$75,000 bond for all geothermal, mining, or oil and gas minerals agreements in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds shall be filed for approval with the Secretary.

(c) An operator may file a \$150,000 bond for full nationwide coverage to cover all geothermal or oil and gas minerals agreements without geo-

graphic or acreage limitation to which the operator is or may become a party. Nationwide bonds shall be filed for approval with the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the minerals agreement. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a minerals agreement; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose deposits are Federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a minerals agreement.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs on demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the minerals agreement provisions and conditions or failure to file a replacement in accordance with subparagraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

(iv) The letter of credit shall contain a provision for automatic renewal for periods of not less than one (1) year in the absence of notice to the proper Bureau of Indian Affairs office at least

ninety (90) days prior to the originally stated or any extended expiration date.

(v) A letter of credit used as security for any minerals agreement upon which operations have taken place and final approval for abandonment has not been given, or as security for a state-wide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of a bond may be increased in any particular case at the discretion of the Secretary.

[59 FR 14971, Mar. 30, 1994; 60 FR 10474, Feb. 24, 1995]

**§ 225.31 Manner of payments.**

Unless specified otherwise in the minerals agreement, after production has been established, all payments due for royalties, bonuses, rentals and other payments under a minerals agreement shall be made to the Secretary or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the Superintendent or Area Director.

**§ 225.32 Permission to start operations.**

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of the minerals agreement pursuant to the regulations. After a minerals agreement is approved, written permission to start operations must be secured by applying for the permits referred to in paragraph (b) of this section.

(b) Applicable permits in accordance with rules and regulations in 30 CFR part 750, 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTL) issued thereunder shall be required before actual operations are conducted on the minerals agreement acreage.

**§ 225.33 Assignment of minerals agreements.**

An assignment of a minerals agreement, or any interest therein, shall not

be valid without the approval of the Secretary and, if required in the minerals agreement, the Indian mineral owner. The assignee must be qualified to hold the minerals agreement and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof as stipulated in the minerals agreement. A fully executed copy of the assignment shall be filed with the Secretary within five (5) working days after execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon submission of satisfactory bonds to the Bureau of Indian Affairs by the assignee, and a determination that the assignor has satisfied all accrued obligations.

**§ 225.34 [Reserved]**

**§ 225.35 Inspection of premises; books and accounts.**

(a) Operators shall allow Indian mineral owners, their authorized representatives, or any authorized representatives of the Secretary to enter all parts of the minerals agreement area for the purpose of inspection. Operators shall keep a full and correct account of all operations and submit all related reports required by the minerals agreement and applicable regulations. Books and records shall be available for inspection during regular business hours.

(b) Operators shall provide records to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. All records pertaining to a minerals agreement shall be maintained by an operator in accordance with 30 CFR part 212.

(c) Operators shall provide records to the Authorized Officer in accordance with BLM regulations and guidelines.

(d) Operators shall provide records to the Director's Representative in accordance with OSMRE regulations and guidelines.

**§ 225.36 Minerals agreement cancellation; Bureau of Indian Affairs notice of noncompliance.**

(a) If the Secretary determines that an operator has failed to comply with the regulations in this part; other applicable laws or regulations; the terms

of the minerals agreement; the requirements of an approved exploration, drilling or mining plan; Secretarial orders; or the orders of the Authorized Officer, the Director's Representative, or the MMS Official, the Secretary may:

(1) Serve a notice of noncompliance; or

(2) Serve a notice of proposed cancellation.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the requirements referenced in paragraph (a), and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice of proposed cancellation shall set forth the reasons why cancellation is proposed.

(d) The notice of proposed cancellation or noncompliance shall be served upon the operator by delivery in person or by certified mail to the operator at the operator's last known address. When certified mail is used, the date of service shall be deemed to be when received or five (5) working days after the date it is mailed, whichever is earlier.

(e) The operator shall have thirty (30) days (or such longer time as specified in the notice) from the date that the Bureau of Indian Affairs notice of proposed cancellation or noncompliance is served to respond, in writing, to the Superintendent or Area Director actually issuing the notice.

(f) If an operator fails to take any action that may be prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the operator's failure to comply, then the Secretary may cancel the minerals agreement, specifying the basis for the cancellation. Cancellation of a minerals agreement shall not relieve the operator of any continuing obligation under the minerals agreement.

(g) If an operator fails to take corrective action or to file a timely written response adequately justifying the operator's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation. If the operator fails to comply with the order of

cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (k) of this section, the Secretary may issue an order of minerals agreement cancellation.

(h) This section does not limit any other remedies of the Indian mineral owner as set forth in the minerals agreement.

(i) Nothing in this section is intended to limit the authority of the Authorized Officer, the Director's Representative, or the MMS Official to take any enforcement action authorized pursuant to statute or regulation.

(j) The Authorized Officer, the Director's Representative, the MMS Official, and the Superintendent or Area Director should consult with one another before taking any enforcement actions.

(k) If orders of cessation or minerals agreement cancellation issued pursuant to this section are issued by a designee of the Secretary other than the Assistant Secretary for Indian Affairs, the orders may be appealed under 25 CFR part 2. If the orders are issued by the Secretary or the Assistant Secretary for Indian Affairs, and not one of their delegates or subordinates, the orders are the final orders of the Department.

#### § 225.37 Penalties.

(a) In addition to or in lieu of cancellation under § 225.36, violations of the terms and conditions of any minerals agreement, the regulations in this part, other applicable laws or regulations, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary may subject an operator to a penalty of not more than \$1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the operator either personally or by certified mail to the operator at the operator's last known address. The date of service by certified mail shall be deemed to be the date received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise

the operator of the operator's right to either request a hearing within thirty (30) days of receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent or Area Director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2. If within thirty (30) days of receipt of the notice of proposed penalty the operator has not requested a hearing or paid the amount of the proposed penalty, a final notice of penalty shall be served.

(d) If the person served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits presented for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the Indian mineral owner and upon submission and acceptance of a bond deemed adequate to indemnify the Indian mineral owner from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment of penalties in full more than ten (10) days after a final decision imposing a penalty shall subject the operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific minerals agreement provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director's Representative,

or the MMS Official to impose penalties under applicable statutory or regulatory authorities;

(2) Replacing, superseding, or replicating any penalty provision in the terms and conditions of a minerals agreement approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of minerals agreement provisions for which the Authorized Officer, Director's Representative, or MMS Official has either statutory or regulatory authority to assess a penalty.

#### **§225.38 Appeals.**

Appeals from decisions of Officials of the Bureau of Indian Affairs under this part may be taken pursuant to 25 CFR part 2.

#### **§225.39 Fees.**

(a) Unless otherwise authorized by the Secretary, each minerals agreement or assignment thereof, shall be accompanied by a filing fee of \$75.00 at the time of filing.

(b) An Indian mineral owner shall not be required to pay a filing fee if the Indian mineral owner, pursuant to a provision in the existing minerals agreement, acquires an additional interest in that minerals agreement.

#### **§225.40 Government employees cannot acquire minerals agreements.**

U.S. Government employees are prevented from acquiring any interest(s) in minerals agreements by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

### **PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING**

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AUTHORITY: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660.

SOURCE: 39 FR 22254, June 21, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 226.1 Definitions.

As used in this part 226, terms shall have the meanings set forth in this section.

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) *Osage Tribal Council* means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to lease or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.

(c) *Superintendent* means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or his authorized representative acting under delegated authority.

(d) *Oil lessee* means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part.

(e) *Gas lessee* means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part.

(f) *Oil and gas lessee* means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part.

(g) *Primary term* means the basic period of time for which a lease is issued during which the lease contract may be kept in force by payment of rentals.

(h) *Major purchaser* means any one of the minimum number of purchasers taking 95 percent of the oil in Osage County, Oklahoma. Any oil purchased by a purchaser from itself, its subsidiaries, partnerships, associations, or other corporations in which it has a financial or management interest shall be excluded from the determination of a major purchaser.

(i) *Casinghead gas* means gas produced from an oil well as a consequence of oil production from the same formation.

(j) *Natural gas* means any fluid, either combustible or noncombustible, recovered at the surface in the gaseous phase and/or hydrocarbons recovered at the surface as liquids which are the result of condensation caused by reduction of pressure and temperature of hydrocarbons originally existing in a reservoir in the gaseous phase.

(k) *Authorized representative* of an oil lessee, gas lessee, or oil and gas lessee means any person, group, or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a lessee or any subcontractor to conduct oil and gas operations or provide facilities to market oil and gas.

(l) *Oil well* means any well which produces one (1) barrel or more of crude petroleum oil for each 15,000 standard cubic feet of natural gas.

(m) *Gas well* means any well which:

(1) Produces natural gas not associated with crude petroleum oil at the time of production or

(2) Produces more than 15,000 standard cubic feet of natural gas to each barrel of crude petroleum oil from the same producing formation.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

#### LEASING PROCEDURE, RENTAL AND ROYALTY

##### § 226.2 Sale of leases.

(a) Written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.

(b) The Superintendent, with the consent of the Osage Tribal Council, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a check or cash in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be

subject to the acceptance of the Osage Tribal Council and approval of the Superintendent. Within 20 days after notification of being the successful bidder, and said bidder must submit to the Superintendent the balance of the cash bonus, a \$10 filing fee, and the lease in completed form. The Superintendent may extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the bidder fails to pay the full cash consideration within said period or fails to file the completed lease within said period or extension thereof, or if the lease is rejected through no fault of the Osage Tribal Council or the Superintendent, 25 percent of the cash bonus bid will be forfeited for the use and benefits of the Osage Tribe. The Superintendent may reject a lease made on an accepted bid, upon evidence satisfactory to him of collusion, fraud, or other irregularity in connection with the notice of sale. The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage Tribal Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

(c) Each oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact prior to its approval by the Superintendent.

(d) Lessee shall accept a lease with the understanding that a mineral not covered by his lease may be leased separately.

(e) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the Government and no such employee shall be permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner.

(f) The Osage Tribal Council may utilize the following procedures among others, in entering into a mining lease. A contract may be entered into through competitive bidding as outlined in §226.2(b), negotiation, or a combination of both. The Osage Tribal

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Council may also request the Superintendent to undertake the preparation, advertisement and negotiation. The Superintendent may approve any such contract made by the Osage Tribal Council.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### § 226.3 Surrender of lease.

Lessee may, with the approval of the Superintendent and payment of a \$10 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities. If the lease, or portion being surrendered, is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation: *Provided*, That if this lease has been recorded, Lessee shall execute a release and record the same in the proper office. Such surrender shall not entitle Lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve Lessee and his sureties of any obligation and liability incurred prior to such surrender: *Provided further*, That when there is a partial surrender of any lease and the acreage to be retained is less than 160 acres or there is a surrender of a separate horizon, such surrender shall become effective only with the consent of the Osage Tribal Council and approval of the Superintendent.

[43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### § 226.4 Form of payment.

Sums due under a lease contract and/or the regulations in this part shall be paid by cash or check made payable to the Bureau of Indian Affairs and delivered to the Osage Agency, Pawhuska, Oklahoma 74056. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

#### § 226.5 Leases subject to current regulations.

Leases issued pursuant to this part shall be subject to the current regulations of the Secretary, all of which are

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made a part of such leases: *Provided*, That no amendment or change of such regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

#### § 226.6 Bonds.

Lessees shall furnish with each lease a corporate surety bond acceptable to the Superintendent as follows:

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in an amount of not less than \$5,000 for each quarter section or fractional quarter section covered by said lease: *Provided, however*, That one bond in the penal sum or not less than \$50,000 may be filed on Form G covering all oil, gas and combination oil and gas leases not in excess of 10,240 acres to which Lessee is or may become a party.

(b) In lieu of the bonds required under paragraph (a) of this section, a bond in the penal sum of \$150,000 may be filed on Form 5-5438 for full nationwide coverage of all leases, without geographic or acreage limitation, to which the Lessee is or may become a party.

(c) A bond on Form H shall be filed in an amount of not less than \$5,000 covering a lease acquired through assignment where the assignee does not have a collective bond on form G or nationwide bond, or the corporate surety does not execute its consent to remain bound under the original bond given to secure the faithful performance of the terms and conditions of the lease.

(d) The right is specifically reserved to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when the Superintendent deems it proper. The nationwide bond may be increased at any time in the discretion of the Secretary.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

**§ 226.7 Provisions of forms made a part of the regulations.**

Leases, assignments, and supporting instruments shall be in the form prescribed by the Secretary, and such forms are hereby made a part of the regulations.

**§ 226.8 Corporation and corporate information.**

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its Articles of Incorporation and, if foreign to the State of Oklahoma, evidence showing compliance with the corporation laws thereof.

(b) Whenever deemed advisable the Superintendent may require a corporation to file any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within a reasonable time.

**§ 226.9 Rental and drilling obligations.**

(a) Oil leases, gas leases, and combination oil and gas leases. Unless Lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than \$1 per acre for an oil or gas lease, or not less than \$2.00 per acre for a combination oil and gas lease, shall be paid before the end of the first year of the lease. The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent, or shall have been mailed as indicated by postmark on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further pay-

ment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part: *Provided*, That the Superintendent in his discretion may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development. If Lessee refuses to comply, the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation as to the acreage or horizon the further development of which was ordered: *Provided further*, That the Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when in his judgment, such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Tribe. The superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production. If a lessee holds both an oil lease and a gas lease covering the same acreage, such lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Tribal Council, grant an extension of the primary term of a lease on which the actual drilling of a well shall have commenced within the term thereof or for the purpose of enabling Lessee to obtain a market for his oil and/or gas production.

[43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 226.10 Term of lease.**

Leases issued hereunder shall be for a primary term as established by the Osage Tribal Council, approved by the Superintendent, and so stated in the notice of sale of such leases and so long

thereafter as the minerals specified are produced in paying quantities.

[43 FR 8136, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 226.11 Royalty payments.**

(a) *Royalty on oil*—(1) *Royalty rate.* Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 16⅔ percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: *Provided,* That when the quantity of oil taken from all the producing wells on any quarter-section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to a revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than 12½ percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

(3) *Royalty in kind.* Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

(b) *Royalty on gas*—(1) *Oil lease.* All casinghead gas shall belong to the oil Lessee subject to any rights under existing gas leases. All casinghead gas re-

moved from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and be subject to a royalty of not less than 16⅔ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If an oil Lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his/hers or others, a royalty of not less than 16⅔ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized or sold by the gas Lessee, subject to the prescribed royalty of not less than 16⅔ percent of the market value.

(2) *Gas lease.* Lessee shall pay a royalty of not less than 16⅔ percent of the market value value of all natural gas and products extracted therefrom produced and sold from his lease. Natural gas used in the reasonable and prudent operation and development of said lease shall be exempted from royalty payment.

(3) *Combination oil and gas lease.* Lessee shall pay royalty as provided in paragraphs (b)(1) and (2) of this section.

(c) *Minimum royalty.* In no event shall the royalty paid from producing leases during any year be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable within 45 days following the end of the lease year. After the primary term, Lessee shall submit with his payment evidence that the lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production. Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 1½ percent per month for each month or fraction thereof until paid.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990; 59 FR 22104, Apr. 28, 1994]

**§ 226.12 Government reserves right to purchase oil.**

Any of the executive departments of the U.S. Government shall have the option to purchase all or any part of the oil produced from any lease at not less than the highest posted price as defined in § 226.11.

**§ 226.13 Time of royalty payments and reports.**

(a) Royalty payments due may be paid by either purchaser or Lessee. Unless otherwise provided by the Osage Tribal Council and approved by the Superintendent, all payments shall be due by the 25th day of each month and shall cover the sales of the preceding month. Failure to make such payments shall subject Lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 1½ percent for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charges.

(b) Lessee shall furnish certified monthly reports by the 25th of each following month covering all operations, whether there has been production or not, indicating therein the total amount of oil, natural gas, casinghead gas, and other products subject to royalty payment.

(c) Failure to remit payments or reports shall subject Lessee to further penalties as provided in §§ 226.42 and 226.43 and shall subject the division order to cancellation.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

**§ 226.14 Contracts and division orders.**

(a) Lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom which will provide for the purchaser to make payment of royalty in accordance with his lease: *Provided*, That such division orders or contracts shall not relieve Lessee from responsibility for the payment of the royalty should the purchaser fail to pay. No production shall be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent: *Provided further*, That

the Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract. Lessee shall file a certified monthly report and pay royalty on the value of all oil and gas used off the premises for development and operating purposes. Lessee shall be responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) Lessee shall require the purchaser of oil and/or gas from his/her lease or leases to furnish the Superintendent, no later than the 25th day of each month, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold during the preceding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

**§ 226.15 Unit leases, assignments and related instruments.**

(a) *Unitization of leases.* The Osage Tribal Council and Lessee or Lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases. The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate. Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval. Upon approval the leases included thereunder shall be restored to their original terms: *Provided*, That for the purpose of preventing waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued heretofore and hereafter under the provisions of the regulations in this part shall be subject to any unit development plan affecting the leased lands that may be

required by the Superintendent with the consent of the Osage Tribal Council, and which plan shall adequately protect the rights of all parties in interest including the Osage Mineral Estate.

(b) *Assignments.* Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. Lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: *Provided*, That when an assignment covers only a portion of a lease or covers interests in separate horizons such assignment shall be subject to both the consent of the Osage Tribal Council and approval of the Superintendent. If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days. A filing fee of \$10 shall accompany each assignment.

(c) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in paragraph (b) of this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of Lessee under his lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or pay-

ments out of production, whether or not actually paid, shall not be considered in justifying the shutdown or abandonment of any well. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (b) of this section. An agreement creating overriding royalties or payment out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

(d) *Drilling contracts.* The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval merely authorizes entry on the lease for the purpose of development work.

(e) *Combining leases.* The lessee owning both an oil lease and gas lease covering the same acreage is authorized to convert such leases to a combination oil and gas lease.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

#### OPERATIONS

##### § 226.16 Commencement of operations.

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent: *Provided*, That the Superintendent may grant authority to any party under such rules, consistent with the regulations in this part that he deems proper, to conduct geophysical and geological exploration work.

(b) Lessee shall submit applications on forms to be furnished by the Superintendent and secure his approval before:

(1) Well drilling, treating, or work-over operations are started on the leased premises.

(2) Removing casing from any well.

(c) Lessee shall notify the Superintendent a reasonable time in advance

of starting work, of intention to drill, redrill, deepen, plug, or abandon a well.

**§226.17 How to acquire permission to begin operations on a restricted homestead allotment.**

(a) Lessee may conduct operations within or upon a restricted homestead selection only with the written consent of the Superintendent.

(b) If the allottee is unwilling to permit operations on his homestead, the Superintendent will cause an examination of the premises to be made with the allottee and lessee or his representative. Upon finding that the interests of the Osage Tribe require that the tract be developed, the Superintendent will endeavor to have the parties agree upon the terms under which operations on the homestead may be conducted.

(c) In the event the allottee and lessee cannot reach an agreement, the matter shall be presented by all parties before the Osage Tribal Council, and the Council shall make its recommendations. Such recommendations shall be considered as final and binding upon the allottee and lessee. A guardian may represent the allottee. Where no one is authorized or where no person is deemed by the Superintendent to be a proper party to speak for a person of unsound mind or feeble understanding, the Principal Chief of the Osage Tribe shall represent him.

(d) If the allottee or his representative does not appear before the Osage Tribal Council when notified by the Superintendent, or if the Council fails to act within 10 days after the matter is referred to it, the Superintendent may authorize lessee to proceed with operations in conformity with the provisions of his lease and the regulations in this part.

**§226.18 Information to be given surface owners prior to commencement of drilling operations.**

Except for the surveying and staking of a well, no operations of any kind shall commence until the lessee or his/her authorized representative shall meet with the surface owner or his/her representative, if a resident of and present in Osage County, Oklahoma. Unless waived by the Superintendent or otherwise agreed to between the les-

see and surface owner, such meeting shall be held at least 10 days prior to the commencement or any operations, except for the surveying and staking of the well. At such meeting lessee or his/her authorized representative shall comply with the following requirements:

(a) Indicate the location of the well or wells to be drilled.

(b) Arrange for route of ingress and egress. Upon failure to agree on route ingress and egress, said route shall be set by the Superintendent.

(c) Impart to said surface owners the name and address of the party or representative upon whom the surface owner shall serve any claim for damages which he may sustain from mineral development or operations, and as to the procedure for settlement thereof as provided in §226.21

(d) Where the drilling is to be on restricted land, lessee or his authorized representative in the manner provided above shall meet with the Superintendent.

(e) When the surface owner or his/her representative is not a resident of, or is not physically present in, Osage County, Oklahoma, or cannot be contacted at the last known address, the Superintendent may authorize lessee to proceed with operations.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8136, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

**§226.19 Use of surface of land.**

(a) Lessee or his/her authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing shall be set by the Superintendent. The right to use water for lease operations is established by §226.24. Lessee shall conduct his/her operations in a workmanlike manner,

commit no waste and allow none to be committed upon the land, nor permit any unavoidable nuisance to be maintained on the premises under his/her control.

(b) Before commencing a drilling operation, Lessee shall pay or tender to the surface owner commencement money in the amount of \$25 per seismic shot hole and commencement money in the amount of \$300 for each well, after which Lessee shall be entitled to immediate possession of the drilling site. Commencement money will not be required for the redrilling of a well which was originally drilled under the currently lease. A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner does not affect his/her right to compensation for damages as described in §226.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

(c) Where the surface is restricted land, commencement money shall be paid to the Superintendent for the landowner. All other surface owners shall be paid or tendered such commencement money direct. Where such surface owners are not residents of Osage County nor have a representative located therein, such payment shall be made or tendered to the last known address of the surface owner at least 5 days before commencing drilling operation on any well: *Provided*, That should lessee be unable to reach the owner of the surface of the land for the purpose of tendering the commencement money or if the owner of the surface of the land shall refuse to accept the same, lessee shall deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The superintendent shall

thereupon advise the owner of the surface of the land by mail at his last known address that the commencement money is being held for payment to him upon his written request.

(d) Lessee shall also pay fees for tank sites not exceeding 50 feet square at the rate of \$100 per tank site or other vessel: *Provided*, That no payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing. The sum to be paid for a tank occupying more than 50 feet square shall be agreed upon between the surface owner and lessee or, on failure to agree, the same shall be determined by arbitration as provided by §226.21.

[39 FR 22254, June 22, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

**§226.20 Settlement of damages claimed.**

(a) Lessee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If lessee or his authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(b) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

(c) In settlement of damages on restricted land all sums due and payable

shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface Lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50649, Nov. 17, 1976; 43 FR 8137, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 226.21 Procedure for settlement of damages claimed.**

Where the surface owner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by lessee or his authorized representative, the procedure for recovery shall be as follows:

(a) The party or parties aggrieved shall, as soon as possible after the discovery of any damages, serve written notice to Lessee or his authorized representative as provided by § 226.18. Written notice shall contain the nature and location of the alleged damages, the date of occurrence, the names of the party or parties causing said damages, and the amount of damages. It is not intended by this requirement to limit the time within which action may be brought in the courts to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time of such notice, Lessee or his authorized representative shall try to adjust the claim with the party or parties aggrieved within 20 days from receipt of the notice. If the claimant is the owner of restricted property and a settlement results, a copy of the settlement agreement shall be filed with the Superintendent. If the settlement agreement is approved by the Superintendent, payment shall be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 days specified, then within 10 days thereafter each of the interested parties shall appoint an arbitrator who immediately upon their appointment shall agree upon a third arbitrator. If the two arbitrators shall fail to agree upon a third arbitrator within 10 days, they shall immediately notify the parties in interest. If said parties cannot agree upon a third arbitrator within 5 days after receipt of such notice, the Superintendent shall appoint the third arbitrator.

(d) As soon as the third arbitrator is appointed, the arbitrators shall meet; hear the evidence and arguments of the parties; and examine the lands, crops, improvements, or other property alleged to have been injured. Within 10 days they shall render their decision as to the amount of the damage due. The arbitrators shall be disinterested persons. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or his authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee, or his authorized representative, such lessee or said representative shall join in the appointment of an arbitrator.

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and forthwith shall be served upon the parties in interest. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against Lessee or his/her authorized representative, he/she shall pay the same, together with interest at an annual rate established for the Internal Revenue Service from date of award, within 10 days after the expiration of said period for filing an action.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50649, Nov. 17, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

EDITORIAL NOTE: At 55 FR 33115, Aug. 14, 1990, the Bureau of Indian Affairs published a document amending § 226.21(f) by removing the word “forthwith” from the first sentence and adding the word “forthwith” to follow directly after the word “served”; however, because these terms do not exist in the first sentence, this amendment could not be incorporated.

**§ 226.22 Prohibition of pollution.**

(a) All operators, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, shall at all times conduct their operations and drill, equip, operate, produce, plug and abandon all wells drilled for oil or gas, service wells or exploratory wells (including seismic, core and stratigraphic holes) in a manner that will prevent pollution and the migration of oil, gas, salt water or other substance from one stratum into another, including any fresh water bearing formation.

(b) Pits for drilling mud or deleterious substance used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained to prevent pollution of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the surface owner, user, or the Superintendent gives consent to the contrary. Immediately after completion of operations, pits shall be emptied and leveled unless otherwise requested by surface owner or user.

(c) Drilling pits shall be adequate to contain mud and other material extracted from wells and shall have adequate storage to maintain a supply of mud for use in emergencies.

(d) No earthen pit, except those used in the drilling, completion, recompletion or workover of a well, shall be

constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits shall not be used for the continued storage of salt water or other deleterious substances.

(e) Deleterious fluids other than fresh water drilling fluids used in drilling or workover operations, which are displaced or produced in well completion or stimulation procedures, including but not limited to fracturing, acidizing, swabbing, and drill stem tests, shall be collected into a pit lined with plastic of at least 30 mil or a metal tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

**§ 226.23 Easements for wells off leased premises.**

The Superintendent, with the consent of the Osage Tribal Council, may grant commercial and noncommercial easements for wells off the leased premises to be used for purposes associated with oil and gas production. Rental payable to the Osage Tribe for such easements shall be an amount agreed to by Grantee and the Osage Tribal Council subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement therefor shall be made as provided in § 226.21.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

**§ 226.24 Lessee's use of water.**

Lessee or his contractor may, with the approval of the Superintendent, use water from streams and natural water courses to the extent that same does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, Lessee or his contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, provided such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. Lessee or

his contractor may install necessary lines and other equipment within the Osage Mineral Estate to obtain such water. Any damage resulting from such installation shall be settled as provided in § 226.21.

**§ 226.25 Gas well drilled by oil lessees and vice versa.**

Prior to drilling, the oil or gas lessee shall notify the other lessees of his/her intent to drill. When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, he/she shall immediately notify the other lessee and the Superintendent. Lessee drilling the well shall obtain all information which a prudent operator utilizes to evaluate the productive capability of such formation or zone.

(a) *Gas well to be turned over to gas lessee.* If the oil lessee drills a gas well, he/she shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the gas lessee and the Superintendent. If the gas lessee does not, within 45 days after receiving notice and cost of drilling, elect to take over such well and reimburse the oil lessee the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

(b) *Oil well to be turned over to oil lessee.* If the gas lessee drills an oil well, he/she shall immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the Superintendent. If the oil lessee does not, within 45 days after receipt of notice and cost of drilling, elect to take over the well, he/she shall

immediately notify the gas lessee, and the disposition of such well and the production therefrom shall be subject to the approval of the Superintendent. Should the oil lessee elect to take over the well, he/she shall pay the gas lessee the cost of drilling the same, including all damages paid and cost in-place of casing and other equipment. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

(c) *Lands not leased.* If the gas lessee shall drill an oil well upon lands not leased for oil purposes or vice versa, the Superintendent may, until such time as said lands are leased, permit the lessee who drilled the well to operate and market the production therefrom. When said lands are leased, the lessee who drilled and completed the well shall be reimbursed by the oil or gas lessee, for the cost of drilling said well, including all damages paid and the cost in-place of casing, tubing, and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall be determined by the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

EDITORIAL NOTE: At 55 FR 33115, Aug. 14, 1990, the Bureau of Indian Affairs published a document amending § 226.25(b) by removing in the third sentence the word "the" before the word "receipt", removing the word "such" before the word "notice", removing the words "notice of the," and in the fourth sentence inserting the word "casing" preceding and followed by commas after the word "tubing"; however, because these terms do not exist in the third and fourth sentences, this amendment could not be incorporated.

**§ 226.26 Determining cost of well.**

The term "cost of drilling" as applied where one lessee takes over a well

drilled by another, shall include all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section shall be presented to proposed purchasing lessee within 10 days after the completion of the well. In the event of a disagreement between the parties as to the charges assessed against the well that is to be taken over, such charges shall be determined by the Superintendent.

**§ 226.27 Gas for operating purposes and tribal use.**

(a) *Gas to be furnished oil lessee.* Lessee of a producing gas lease shall furnish the oil lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree the rate shall be determined by the Superintendent: *Provided*, That the oil lessee shall at his own expense and risk, furnish and install the necessary connections to the gas lessee's well or pipeline. All such connections shall be reported in writing to the Superintendent.

(b) *Use of gas by Osage Tribe.* (1) Gas from any well or wells shall be furnished any Tribal-owned building or enterprise at a rate not to exceed the price less royalty being received or offered by a gas purchaser: *Provided*, That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the rate to be paid by the Osage Tribe shall be determined by the Superintendent based on prices being paid by purchasers in the Osage Mineral Estate. The Osage Tribe is to furnish all necessary material and labor for such connection with Lessee's gas system. The use of such gas shall be at the risk of the Osage Tribe at all times.

(2) Any member of the Osage Tribe residing in Osage County and outside a corporate city is entitled to the use at his own expense of not to exceed 400,000 cubic feet of gas per calendar year for his principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent: *Provided*, That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is

available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the amount to be paid by the Tribal member shall be determined by the Superintendent. Gas to Tribal members is not royalty free. The Tribal member is to furnish all necessary material and labor for such connection to Lessee's gas system, and shall maintain his own lines. The use of such gas shall be at the risk of the Tribal member at all times.

(3) Gas furnished by Lessee under paragraphs (b) (1) and (2) of this section may be terminated only with the approval of the Superintendent. Written application for termination must be made to the Superintendent showing justification.

CESSATION OF OPERATIONS

**§ 226.28 Shutdown, abandonment, and plugging of wells.**

No productive well shall be abandoned until its lack for further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. Lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by him/her.

(a) Application for authority to permanently shut down or discontinue use or operation of a well shall set forth justification, probable duration the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall be subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the oil lessee or the gas lessee, as the case may be, shall offer the well to the other for his recompletion or use under such terms as may be mutually agreed upon but not in conflict with the regulations. Failure of the Lessee receiving the offer to reply within 10 days after receipt thereof shall be deemed as rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the

terms of the offer within 30 days, the disposition of such well shall be determined by the Superintendent.

(c) The Superintendent is authorized to shut in a lease when the lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

**§ 226.29 Disposition of casings and other improvements.**

(a) Upon termination of lease, permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by cancellation. Exceptions include personal property not limited to tools, tanks, pipelines, pumping and drilling equipment, derricks, engines, machinery, tubing, and the casings of all wells: *Provided*, That when any lease terminates, all such personal property shall be removed the word "terminates"; and in the last sentence of the paragraph, within 90 days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings shall revert to Lessor and all other personal property and permanent improvements to the surface owner. Nothing herein shall be construed to relieve lessee of responsibility for removing any such personal property or permanent improvements from the premises if required by the Superintendent and restoring the premises as nearly as practicable to the original state.

(b) Upon cancellation of lease. When there has been a cancellation for cause, Lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

(c) Wells to be abandoned shall be promptly plugged as prescribed by the Superintendent. Applications to plug shall include a statement affirming compliance with § 226.28(b) and shall set forth reasons for plugging, a detailed statement of the proposed work includ-

ing kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and removing casing, and any other pertinent information: *Provided*, That the Superintendent may give oral permission and instructions pending receipt of a written application to plug a newly drilled hole. Lessee shall remit a fee of \$15 with each written application for authority to plug a well. This fee will be refunded if permission is not granted.

(d) Lessee shall plug and fill all dry or abandoned wells in a manner to confine the fluid in each formation bearing fresh water, oil, gas, salt water, and other minerals, and to protect it against invasion of fluids from other sources. Mud-laden fluid, cement, and other plugs shall be used to fill the hole from bottom to top: *Provided*, That if a satisfactory agreement is reached between Lessee and the surface owner, subject to the approval of the Superintendent, Lessee may condition the well for use as a fresh water well and shall so indicate on the plugging record. The manner in which plugging material shall be introduced and the type of material so used shall be subject to the approval of the Superintendent. Within 10 days after plugging, Lessee shall file with the Superintendent a complete report of the plugging of each well. When any well is plugged and abandoned, Lessee shall, within 90 days, clean up the premises around such well to the satisfaction of the Superintendent.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

REQUIREMENTS OF LESSEES

**§ 226.30 Lessees subject to Superintendent's orders; books and records open to inspection.**

Lessee shall comply with all orders or instructions issued by the Superintendent. The Superintendent or his representative may enter upon the leased premises for the purpose of inspection. Lessee shall keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required. Lessee's

books and records shall be available to the Superintendent for inspection.

**§ 226.31 Lessee's process agents.**

(a) Before actual drilling or development operations are commenced on leased lands, Lessee or Assignee, if not a resident of the State of Oklahoma, shall appoint a local or resident representative within the State of Oklahoma on whom the Superintendent may serve notice or otherwise communicate in securing compliance with the regulations in this part, and shall notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, one representative or agent shall be designated whose duties shall be to act for all parties concerned. Designation of such representative should be made by the party in charge of operations.

(c) In the event of the incapacity or absence from the State of Oklahoma of such designated local or resident representative, Lessee shall appoint a substitute to serve in his stead. In the absence of such representative or appointed substitute, any employee of Lessee upon the leased premises or person in charge of drilling or related operations thereon shall be considered the representative of Lessee for the purpose of service of orders or notices as herein provided.

**§ 226.32 Well records and reports.**

(a) Lessee shall keep accurate and complete records of the drilling, re-drilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records shall show all the formations penetrated, the content and character of oil, gas, or water in each formation, and the kind, weight, size, landed depth and cement record of casing used in drilling each well; the record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like; the materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and any other information obtained in the course of well operation.

(b) Lessee shall take such samples and make such tests and surveys as may be required by the Superintendent to determine conditions in the well or producing reservoir and to obtain information concerning formations drilled, and shall furnish reports there-of as required by the Superintendent.

(c) Within 10 days after completion of operations on any well, Lessee shall transmit to the Superintendent the applicable information on forms furnished by the Superintendent; a copy of electrical, mechanical or radioactive log, or other types of survey of the well bore; and core analysis obtained from the well. Lessee shall also submit other reports and records of operations as may be required and in the manner and form prescribed by the Superintendent.

(d) Lessee shall measure production of oil, gas, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(e) Upon request and in the manner and form prescribed by the Superintendent, Lessee shall furnish a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the Superintendent may require.

**§ 226.33 Line drilling.**

Lessee shall not drill within 300 feet of boundary line of leased lands, nor locate any well or tank within 200 feet of any public highway, any established watering place, or any building used as a dwelling, granary, or barn, except with the written permission of the Superintendent. Failure to obtain advance written permission from the Superintendent shall subject lessee to cancellation of his/her lease and/or plugging of the well.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33116, Aug. 14, 1990]

**§ 226.34 Wells and tank batteries to be marked.**

Lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with number, legal description, operator, and telephone number, and shall take all necessary

precautions to preserve these markings.

[55 FR 33116, Aug. 14, 1990]

**§ 226.35 Formations to be protected.**

Lessee shall, to the satisfaction of the Superintendent, take all proper precautions and measures to prevent damage or pollution of oil, gas, fresh water, or other mineral bearing formations.

**§ 226.36 Control devices.**

In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, lessee shall install an approved gate valve or other controlling device which is in proper working condition for use until the well is completed. At all times preventative measures must be taken in all well operations to maintain proper control of subsurface strata.

[55 FR 33116, Aug. 14, 1990]

**§ 226.37 Waste of oil and gas.**

Lessee shall conduct all operations in a manner that will prevent waste of oil and gas and shall not wastefully utilize oil or gas. The Superintendent shall have the authority to impose such requirements as he deems necessary to prevent waste of oil and gas and to promote the greatest ultimate recovery of oil and gas. Waste as applied herein includes, but is not limited to, the inefficient excessive or improper use or dissipation of reservoir energy which would reasonably reduce or diminish the quantity of oil or gas that might ultimately be produced, or the unnecessary or excessive surface loss or destruction, without beneficial use, of oil and/or gas.

**§ 226.38 Measuring and storing oil.**

All production run from the lease shall be measured according to methods and devices approved by the Superintendent. Facilities suitable for containing and measuring accurately all crude oil produced from the wells shall be provided by Lessee and shall be located on the leasehold unless otherwise approved by the Superintendent. Lessee shall furnish to the Superintendent a copy of 100-percent capacity tank

table for each tank. Meters and installations for measuring oil must be approved, and tests of their accuracy shall be made when directed by the Superintendent.

**§ 226.39 Measurement of gas.**

All gas, required to be measured, shall be measured by meter (preferably of the orifice meter type) unless otherwise agreed to by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of Lessee or purchaser at such places as may be agreed to by the Superintendent. For computing the volume of all gas produced, sold or subject to royalty, the standard of pressure shall be 14.65 pounds to the square inch, and the standard of temperature shall be 60 degrees F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the Superintendent.

**§ 226.40 Use of gas for lifting oil.**

Lessee shall not use natural gas from a distinct or separate stratum for the purpose of flowing or lifting the oil, except where said Lessee has an approved right to both the oil and the gas, and then only with the approval of the Superintendent of such use and of the manner of its use.

**§ 226.41 Accidents to be reported.**

Lessee shall make a complete report to the Superintendent of all accidents, fires, or acts of theft and vandalism occurring on the leased premises.

PENALTIES

**§ 226.42 Penalty for violation of lease terms.**

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to cancellation by the Superintendent, or Lessee to a fine of not more than \$500 per day for each day of such violation or noncompliance with the orders of the Superintendent, or to both such fine and cancellation. Fines not received within 10 days after notice of the decision shall be subject to late

§ 226.43

charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charge.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33116, Aug. 14, 1990]

**§ 226.43 Penalties for violation of certain operating regulations.**

In lieu of the penalties provided under § 226.42, penalties may be imposed by the Superintendent for violation of certain sections of the regulations of this part as follows:

(a) For failure to obtain permission to start operations required by § 226.16(b), \$50 per day until permission is obtained.

(b) For failure to file records required by § 226.32, \$50 per day until compliance is met.

(c) For failure to mark wells and tank batteries as required by § 226.34, \$50 for each well and tank battery.

(d) For failure to construct and maintain pits as required by § 226.22, \$50 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 226.36 regarding valve or other approved controlling device, \$100.

(f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 226.16(c) and 226.25, \$200.

(g) For failure to properly care for and dispose of deleterious fluids as provided in § 226.22, \$500 per day until compliance is met.

(h) For failure to file plugging reports as required by § 226.29 and for failure to file reports as required by § 226.13, \$50 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 days after ordered by the Superintendent in writing under authority provided in this part, if said operation is thereafter performed by or through the Superintendent, the actual cost of performance thereof, plus 25 percent.

(j) Lessee or his/her authorized representative is hereby notified that

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criminal procedures are provided by 18 U.S.C. 1001 for knowingly filing fraudulent reports and information.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33116, Aug. 14, 1990]

APPEALS AND NOTICES

**§ 226.44 Appeals.**

Any person, firm or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, by virtue of the regulations in this part, may appeal pursuant to 25 CFR part 2.

[55 FR 33116, Aug. 14, 1990]

**§ 226.45 Notices.**

Notices and orders issued by the Superintendent to the representative and/or operator shall be binding on the lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

[55 FR 33116, Aug. 14, 1990]

**§ 226.46 Information collection.**

The Office of Management and Budget has determined that the information collection requirements contained in this part need not be submitted for clearance pursuant to 44 U.S.C. 3501 *et seq.*

[55 FR 33116, Aug. 14, 1990]

**PART 227—LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING**

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AUTHORITY: Sec. 1, 39 Stat. 519, unless otherwise noted.

SOURCE: 22 FR 10622, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 227.1 Definitions.

(a) The term "superintendent" in this part refers to the superintendent or other officers of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the Shoshone or Wind River Reservation.

(b) The term "supervisor" in this part refers to a representative of the Secretary of the Interior, under direction of the Director of the U.S. Geological Survey, authorized and empowered to supervise and direct operations under oil and gas mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

CROSS REFERENCE: For rules and regulations of the Geological Survey, see 30 CFR chapter II.

## HOW TO ACQUIRE LEASES

### § 227.2 Applications for leases.

Applications for leases should be made to the superintendent.

### § 227.3 Leases to citizens of the United States except Government employees.

Leases will be made only to persons who are citizens of the United States or have declared their intention to become so, or corporations which are organized under the laws of the United States or one of the States or Territories: *Provided*, That no lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government, whether connected with the Bureau or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

### § 227.4 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, after being authorized by the Joint Business Council of the Shoshone and Arapahoe Tribes or its authorized representative, the superintendent shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Secretary of the Interior or his authorized representative, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the superintendent the lease in completed form. The superintendent may for good and sufficient reasons, extend

the time for completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Shoshone and Arapahoe Tribes.

(b) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

[22 FR 10622, Dec. 24, 1957, as amended at 25 FR 7185, July 29, 1960. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§227.5 Terms of leases, procedure for renewal and execution.**

(a) Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years each upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior or his authorized representative, unless otherwise provided by law at the expiration of any such period. Applications for renewal of leases shall be filed with the superintendent within ninety days prior to the date of expiration of the lease. One copy of the application for renewal shall be filed by the applicant with the

Joint Business Council of the Shoshone and Arapahoe Tribes and no lease shall be renewed unless the Joint Business Council or its authorized representative is afforded an opportunity to present the Council's views to the Secretary of the Interior or his authorized representative.

(b) The Secretary of the Interior or his authorized representative may execute oil and gas leases with the consent of the Joint Business Council or its authorized representative, and may execute renewals of leases after consultation with the Joint Business Council or its authorized representative.

[25 FR 7185, July 29, 1960. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§227.6 Corporations and corporate information.**

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the state in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the superintendent January 1 of each year, and at such other times as may be requested.

(b) Whenever deemed advisable in any case the superintendent may require a corporation applicant or lessee to file:

(1) List of officers, principal stockholders, and directors, with post-office addresses and number of shares held by each.

(2) A sworn statement of the proper officer showing:

(i) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of same paid per share.

(ii) Of the stock sold, how much remains unpaid and subject to assessment.

(iii) The amount of cash the company has in its treasury and elsewhere.

(iv) The property, exclusive of cash owned by the company and its value.

(v) The total indebtedness of the company and the nature of its obligations.

(vi) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations, or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the state, and whether they hold such interest for themselves or in trust.

CROSS REFERENCE: For rules and regulations of the Securities and Exchange Commission, see 17 CFR chapter II.

**§227.7 Additional information from applicant.**

The superintendent may, either before or after approval of a lease, call for any additional information desired to carry out the regulations in this part. If a lessee shall fail to furnish the papers necessary to put his lease and bond in proper form for consideration, the superintendent shall forward such lease for disapproval.

**§227.8 Bonds.**

The provisions of §211.6 of this chapter, or as hereafter amended, are applicable to leases under this part.

**§227.9 Acreage limitation: Leases on noncontiguous tracts.**

No person, firm, or corporation will be allowed to lease for oil and gas more than 10,240 acres in the aggregate. The land contained in the lease shall be described by legal subdivisions, and leases may be executed to cover only adjoining or contiguous subdivisions. In case a lessee is a successful bidder for two or more tracts of land which

are not contiguous, separate leases shall be executed.

**§227.10 Minerals other than oil and gas.**

Unreserved, unwithdrawn, and unallotted lands which have not been leased for oil and gas under the act of August 21, 1916 (39 Stat. 519) and which are not chiefly valuable therefor, are subject to mineral application or mineral entry, for minerals other than oil and gas, under the supervision of the Bureau of Land Management.

**§227.11 Bureau of Land Management to be furnished copy of lease.**

The Bureau of Land Management shall be furnished with a copy of each lease signed by the Secretary of the Interior.

**§227.12 Mineral reserves in nonmineral entries.**

Where lands have been leased under authority of said act of August 21, 1916 (39 Stat. 519), and nonmineral entry is subsequently lawfully made for such lands with a view to obtaining a restricted patent therefor, all such subsequently allowed nonmineral entries shall be with the mineral reservation prescribed by the act of July 17, 1914 (38 Stat. 509).

**§227.13 Vested rights to be respected.**

All drilling and other oil and natural gas developments and mining operations, work, and improvements, and all other acts and things necessary to be done, in connection with the exploration for mining and production of oil and natural gas from the leased premises, under the terms and conditions of a lease shall be performed with due regard to the rights, statutory and otherwise, of others, if any, who may have or who may acquire a lawful claim or estate to the leased premises, separate and distinct from the oil and gas or other mineral therein contained. See act of July 17, 1914 (38 Stat. 509).

**§227.14 Government reserves right to purchase oil and gas.**

In time of war or other public emergency any of the executive departments of the United States Government shall have the option to purchase

at the posted market price on the date of sale all or any part of the minerals produced under any lease.

#### RENTS AND ROYALTIES

##### **§ 227.15 Manner of payment.**

All payments due the lessor shall be made to the superintendent for the benefit of the Shoshone Indian Tribe, in accordance with the act of August 21, 1916 (39 Stat. 519), and no credit will be given any lessee for payments made otherwise. Payments of rentals and royalties except the first year's rental, which shall be paid to the superintendent as prescribed in § 227.4 shall be transmitted to the superintendent through the supervisor. All such payments shall be accompanied by a statement, in triplicate, by the lessee, showing the specific items of royalty or rental that the remittance is intended to cover, and payment of royalties on production shall be made not later than the last day of the calendar month following the production for which such payment is to be made.

##### **§ 227.16 Crediting advance annual payments.**

In the event of discovery of minerals in paying quantities all advance rents and advance royalties shall be allowed as credit on stipulated royalties as they accrue for the year for which such advance payments have been made. No refund of any such advance payment made under any lease will be allowed in the event the royalty on production for the year is not sufficient to equal such advance payment; nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease.

##### **§ 227.17 Rates of rents and royalties.**

(a) The lessee shall pay, beginning with the date of execution of leases by the Secretary of the Interior, a rental of \$1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil and/or gas used by the lessee for development and operation pur-

poses on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, "value" for the purposes of the lease may, in the discretion of the Secretary of the Interior, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly at such time as the lease provides; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil by causes beyond his control.

(b) The proceeds from all leases shall be taken up in the accounts of the superintendent for appropriate deposit for the benefit of the Indians.

##### **§ 227.18 Free use of gas by lessor.**

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained

by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

**§ 227.19 Division orders.**

(a) Lessees may make arrangements with the purchasers of oil for the payment of the royalties on production to the superintendent by such purchasers, but such arrangements, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay such royalties when due. Where lessees avail themselves of this privilege, division orders permitting the pipeline companies or other purchasers of the oil to withhold the royalty interest shall be executed and forwarded to the supervisor for approval, as pipeline companies are not permitted to accept or run oil from leased Indian lands until after the approval of a division order showing that the lessee has a lease regularly approved and in effect. When the lessee company runs its own oil, it shall execute an intracompany division order and forward it to the supervisor for his consideration. The right is reserved for the supervisor to cancel a division order at any time or require the pipeline company to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representatives shall be actually present when the oil is gaged and records are made of the temperature, gravity and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all the foregoing measurements, which except lowest gage, shall be made at the time the oil is turned into the pipeline. Failure of the lessee to perform properly these duties will subject the division order to revocation.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR part 221.

OPERATIONS

**§ 227.20 Permission to start operations.**

(a) No operations will be permitted on any lease before it is executed by the Secretary of the Interior.

(b) Written permission must be secured from the supervisor or his representative before any operations are started on the leased premises. After such permission is secured the operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of the regulations in this part may be secured from either the supervisor or the superintendent, and no operations should be attempted without a study of the operating regulations.

**§ 227.21 Restrictions on operations.**

(a) All leases issued under the provisions of the regulations in this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor. In the exercise of his judgment the Secretary of the Interior may take into consideration, among other things, the Federal laws, State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both, and any regulatory action desired by tribal authorities.

(b) All leases issued pursuant to the regulations in this part shall be subject to a co-operative or unit development plan affecting the leased lands if and when required by the Secretary of the Interior, but no lease shall participate in any cooperative or unit plan without prior approval of the Secretary of the Interior.

**§ 227.22 Diligence and prevention of waste.**

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying

quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; pay all damages to crops, buildings, and other improvements on the premises occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond his control.

#### § 227.23 Wells.

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under the applicable law or regula-

tions, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of the lease of not to exceed \$1 per acre per annum, which sum shall be in addition to any rental or royalty herein specified.

#### § 227.24 Penalties.

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, orders of the superintendent or his representative, or of the orders of the supervisor or his representative, shall subject the lessee to a penalty of not more than \$500 per day for each day the terms of the lease, the regulations, or such orders are violated: *Provided*, That the lessee shall be entitled to notice, and hearing within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

#### § 227.25 Inspection of premises, books and accounts.

Lessee shall agree to allow the lessor and his agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purposes of inspection and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the applicable regulations of the Department; and their books and records, showing manner of operations and persons interested, shall be open at all times for

examination of such officers of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations, to make such examination.

**§ 227.26 Assignments and overriding royalties.**

(a) Leases, or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof. No lease or any interest therein, or the use of such lease, shall be assigned, sublet, or transferred directly or indirectly, by working or drilling contract, or otherwise without the consent of the Secretary of the Interior. Assignments of leases shall be filed with the superintendent within 20 days after the date of execution.

(b) An agreement creating overriding royalties or payments out of production under this part shall be subject to the provisions of § 211.26(d) of this chapter, or as hereafter amended.

[22 FR 10622, Dec. 24, 1957, as amended at 23 FR 9759, Dec. 18, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 227.27 Stipulations.**

The lessee under any lease heretofore executed may be stipulation (Form 5-154i), with the consent of the lessor, make such lease subject to all the terms, conditions, and provisions contained in the lease form currently in use. Stipulations shall be filed with the superintendent within 20 days after the date of execution.

**§ 227.28 Cancellations.**

Leases shall be irrevocable except for breach of the terms and conditions of the same and may be forfeited and cancelled by an appropriate proceeding in the U.S. District Court for the District of Wyoming whenever the lessee fails to comply with their terms and conditions; the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(a) That he make application for cancellation to the superintendent having jurisdiction over the land.

(b) That he pay a surrender fee of \$1 at the time the application is made.

(c) That he pay all royalties and rentals due to the date of such application.

(d) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(e) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(f) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment.

(g) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(h) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(i) In the event oil or gas is being drained from the leased premises by wells not covered by the lease; the lease, or any part of it may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

**§ 227.29 Fees.**

Unless otherwise authorized by the Secretary of the Interior or his authorized representative, each lease, sublease, or assignment shall be accompanied at the time of filing by a fee of \$10.

(Sec. 1, 41 Stat. 415, as amended; 25 U.S.C. 413)

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 227.30

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**§ 227.30 Forms.**

The provisions of § 211.30 of this chapter, or as hereafter amended are applicable to this part.

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]