

## Bureau of Indian Affairs, Interior

## § 216.1

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.

### § 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

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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

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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

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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

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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 ex-

ploration or mining plan, or an approved 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

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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

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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.

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**§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.

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217.4 Referral of questions by the joint managers.

217.5 Management decisions.

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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.