

Bureau of Indian Affairs, Interior

§ 213.1

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

Sec.

213.1 Definitions.

HOW TO ACQUIRE LEASES

- 213.2 Applications for leases.
- 213.3 No Government employee shall acquire leases.
- 213.4 Sale of oil and gas leases.
- 213.5 Term of oil and gas leases.
- 213.6 Leases for minerals other than oil and gas.
- 213.7 Fees.
- 213.8 Filing of lease deemed constructive notice.
- 213.9 Noncontiguous tracts.
- 213.10 Lessor's signature.
- 213.11 Minor lessors.
- 213.12 Leases executed by guardians of minors.
- 213.13 Inherited lands.
- 213.14 Corporations and corporate information.
- 213.15 Bonds.
- 213.16 Additional information may be requested by Area Director.
- 213.17 Government reserves right to purchase minerals produced.

RENTS AND ROYALTIES

- 213.18 Manner of payment of rents and royalties.
- 213.19 Crediting advance annual payments.
- 213.20 [Reserved]
- 213.21 Rate of rents on leases other than oil and gas.
- 213.22 Expenditures under lease other than oil and gas.

- 213.23 Royalty rates for minerals other than oil and gas.
- 213.24 Rate of rents and royalties on oil and gas leases.
- 213.25 Free use of gas by lessor.
- 213.26 Rate of royalty on casing-head gas.
- 213.27 Rate of rental for nonutilized gas wells.
- 213.28 Royalty payments and production reports.
- 213.29 Division orders.

OPERATIONS

- 213.30 Permission to start operations.
- 213.31 Restrictions on operations.
- 213.32 Wells.
- 213.33 Diligence and prevention of waste.
- 213.34 Inspection of premises; books and accounts.
- 213.35 Mines to be timbered properly.
- 213.36 Surrender of leased premises in good condition.
- 213.37 Penalties.
- 213.38 Assignments and overriding royalties.
- 213.39 Stipulations.
- 213.40 Cancellations.

REMOVAL OF RESTRICTIONS

- 213.41 Leases executed but not approved before restrictions removed from land.
- 213.42 Operations after removal of restrictions from leased lands.
- 213.43 Relinquishment of Government supervision.
- 213.44 Division of royalty to separate fee owners.
- 213.45 Restrictions especially continued as to certain lands.
- 213.46 Field clerks.
- 213.47 Forms.
- 213.48 Effective date.
- 213.49 Scope of regulations.

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

§213.2

25 CFR Ch. I (4-1-05 Edition)

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 completed 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

Bureau of Indian Affairs, Interior

§ 213.13

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 forms¹ 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.

¹For further information regarding forms, see § 211.30.

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

§213.14

25 CFR Ch. I (4-1-05 Edition)

§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 stock-

holders 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

Bureau of Indian Affairs, Interior

§ 213.18

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 in-

structed, 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

§213.19

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.

25 CFR Ch. I (4-1-05 Edition)

§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

§ 213.27

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 in-

25 CFR Ch. I (4-1-05 Edition)

structions, 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

Bureau of Indian Affairs, Interior

§ 213.34

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, showing manner of operations and persons interested, shall be open at all times for examination by such officers

§ 213.35

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 supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30

25 CFR Ch. I (4-1-05 Edition)

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

Bureau of Indian Affairs, Interior

§ 213.42

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

§213.43

25 CFR Ch. I (4–1–05 Edition)

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,¹ revised April 24, 1935.)

¹For 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 9,² 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]

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

§ 213.48

§ 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.
- 214.4 Bonds.
- 214.5 Additional information.
- 214.6 Failure of lessee to complete lease.
- 214.7 Operation not permitted until lease approved; 160 acres maximum for single lease.
- 214.8 Acreage limitation.
- 214.9 Advance rental.
- 214.10 Royalty rates.
- 214.11 Payment of rents and royalties.
- 214.12 Time of payment of royalties.
- 214.13 Diligence; annual expenditures; mining records.
- 214.14 Use of surface lands.
- 214.15 Homesteads.
- 214.16 Settlement of damages.
- 214.17 Use of timber from restricted lands.
- 214.18 Assignments.
- 214.19 Cancellation.
- 214.20 Annual reports by corporate lessees.
- 214.21 Inspection of lessees' books and records.
- 214.22 Serving of notices.
- 214.23 Plat of mine location.
- 214.24 Forms.
- 214.25 Forfeiture of lease.
- 214.26 Fine; notice and hearing.

25 CFR Ch. I (4-1-05 Edition)

- 214.27 Changes in regulations.
- 214.28 Location of sites for mines and buildings.
- 214.29 Prospecting; abandonment of mines.
- 214.30 Lessees must appoint local representative.

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