

§ 162.502

(ii) To a utility grid serving the public generally; or

(iii) To users within the local community (e.g., on and adjacent to a reservation).

(b) If the generation of electricity is solely to support a use approved under subpart B, Agricultural Leases; subpart C, Residential Leases; or subpart D Business Leases (including religious, educational, recreational, cultural, or other public purposes), for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed by subpart B, C, or D, as appropriate.

§ 162.502 Who must obtain a WEEL or WSR lease?

(a) Anyone seeking to possess Indian land to conduct activities associated with the evaluation of wind resources must obtain a WEEL, except that a WEEL is not required if use or possession of the Indian land to conduct wind energy evaluation activities is authorized:

(1) Under § 162.005(b);

(2) By a permit from the Indian landowners under § 162.007; or

(3) By a tribe on its land under 25 U.S.C. 81.

(b) Except as provided in §§ 162.005(b), 162.501, and paragraph (c) of this section, anyone seeking to possess Indian land to conduct activities associated with the development of wind and/or solar resources must obtain a WSR lease.

(c) A tribe that conducts wind and solar resource activities on its tribal land does not need a WEEL or WSR under this subpart.

§ 162.503 Is there a model WEEL or WSR lease?

There is no model WEEL or WSR lease because of the need for flexibility in negotiating and writing WEELs and WSR leases; however, we may:

(a) Provide other guidance, such as checklists and sample lease provisions, to assist in the lease negotiation process; and

(b) Assist the Indian landowners, upon their request, in developing appropriate lease provisions or in using

25 CFR Ch. I (4-1-14 Edition)

tribal lease forms that conform to the requirements of this part.

WEELs

§ 162.511 What is the purpose of a WEEL?

A WEEL is a short-term lease that allows the lessee to possess trust or restricted lands for the purpose of evaluating wind resources. The lessee may use information collected under the WEEL to assess the potential for wind energy development, and determine future placement and type of wind energy technology to use in developing the energy resource potential of the leased area.

§ 162.512 How long may the term of a WEEL run?

(a) A WEEL must provide for a definite term, state if there is an option to renew and if so, provide for a definite term for the renewal period. WEELs are for project evaluation purposes, and therefore may have:

(1) An initial term that is no longer than 3 years; and

(2) One renewal period not to exceed 3 years.

(b) The exercise of the option to renew must be in writing and the WEEL must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to us, unless the WEEL provides for automatic renewal; and

(3) Additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term.

§ 162.513 Are there mandatory provisions a WEEL must contain?

(a) All WEELs must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the WEEL and authorized uses of the leased premises;

(3) The parties to the WEEL;

(4) The term of the WEEL;

(5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, under § 162.515;

(6) Payment requirements and late payment charges, including interest;

(7) Due diligence requirements, under § 162.517; and

(8) Insurance requirements, under § 162.527.

(b) Where a representative executes a lease on behalf of an Indian landowner or lessee, the lease must identify the landowner or lessee being represented and the authority under which the action is taken.

(c) All WEELs must include the following provisions:

(1) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of leased premises;

(3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.014;

(4) If historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, and the lessee will contact BIA and the tribe with jurisdiction to determine how to proceed and appropriate disposition;

(5) BIA has the right, at any reasonable time during the term of the lease, and upon reasonable notice, in accordance with § 162.589, to enter the leased premises for inspection; and

(6) BIA may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication.

(d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;

(2) The lessee indemnifies the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.

(e) We may treat any provision of a lease document that violates Federal law as a violation of the lease.

[77 FR 72494, Dec. 5, 2012, as amended at 78 FR 19100, Mar. 29, 2013]

§ 162.514 May permanent improvements be made under a WEEL?

(a) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of development. These facilities and associated infrastructure are considered permanent improvements. An equipment installation plan must be submitted with the lease under § 162.528(g).

(b) If any of the following changes are made to the equipment installation plan, the Indian landowners must approve the revised plan and the lessee must provide a copy of the revised plan to BIA:

(1) Location of permanent improvements;

(2) Type of permanent improvements; or

(3) Delay of 90 days or more in any phase of development.

§ 162.515 How must a WEEL address ownership of permanent improvements?

(a) A WEEL must specify who will own any permanent improvements the lessee installs during the lease term. In addition, the WEEL must indicate whether any permanent improvements the lessee installs:

(1) Will remain on the premises upon expiration, termination, or cancellation of the lease whether or not the WEEL is followed by a WSR lease, in a