

§ 162.537 [Reserved]

WSR LEASES

§ 162.538 What is the purpose of a WSR lease?

A WSR lease authorizes a lessee to possess Indian land to conduct activities related to the installation, operation, and maintenance of wind and/or solar energy resource development projects. Activities include installing instrumentation facilities and infrastructure associated with the generation, transmission, and storage of electricity and other related activities. Leases for biomass or waste-to-energy purposes are governed by subpart D of this part.

§ 162.539 Must I obtain a WEEL before obtaining a WSR lease?

You may enter into a WSR lease without a WEEL. While you may enter into a lease as a direct result of energy resource information gathered from a WEEL activity, obtaining a WEEL is not a precondition to entering into a WSR lease.

§ 162.540 How long may the term of a WSR lease run?

(a) A WSR lease must provide for a definite lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a lease approved under 25 U.S.C. 415(a) may not exceed 50 years (consisting of an initial term not to exceed 25 years and one renewal not to exceed 25 years), unless a Federal statute provides for a longer maximum term (e.g., 25 U.S.C. 415(a) allows for a maximum term of 99 years for certain tribes), a different initial term, renewal term, or number of renewals.

(b) For tribal land, we will defer to the tribe's determination that the lease term, including any renewal, is reasonable. For individually owned Indian land, we will review the lease term, including any renewal, to ensure it is reasonable, given the:

- (1) Purpose of the lease;
- (2) Type of financing; and
- (3) Level of investment.

(c) The lease may not be extended by holdover.

§ 162.541 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease 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 lease provides for automatic renewal;
- (3) Whether Indian landowner consent to the renewal is required;
- (4) That the lessee must provide notice of the renewal to the Indian landowners and any sureties and mortgagees;
- (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
- (6) Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).

(b) We will record any renewal of a lease in the LTRO.

§ 162.542 Are there mandatory provisions a WSR lease must contain?

- (a) All WSR leases must identify:
 - (1) The tract or parcel of land being leased;
 - (2) The purpose of the lease and authorized uses of the leased premises;
 - (3) The parties to the lease;
 - (4) The term of the lease;
 - (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing, WSR equipment, roads, transmission lines and related facilities under § 162.543;
 - (6) Who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission;
 - (7) Payment requirements and late payment charges, including interest;
 - (8) Due diligence requirements, under § 162.546;
 - (9) Insurance requirements, under § 162.562; and
 - (10) Bonding requirements under § 162.559. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that