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§ 162.555 May a WSR lease provide for non-monetary or varying types of compensation?

(a) A WSR lease may provide for the following, subject to the conditions in paragraphs (b) and (c) of this section:

(1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

(2) Varying types of consideration at specific stages during the life of the lease, including but not limited to fixed annual payments during installation, payments based on income during an operational period, and bonuses.

(b) For tribal land, we will defer to the tribe's determination that the compensation in paragraph (a) of this section is in its best interest, if the tribe submits a signed certification or tribal authorization stating that it has determined the compensation in paragraph (a) of this section to be in its best interest.

(c) For individually owned land, we may approve a lease that provides for compensation under paragraph (a) of this section if we determine that it is in the best interest of the Indian landowners.

§ 162.556 Will BIA notify a lessee when a payment is due under a WSR lease?

Upon request of the Indian landowners, we may issue invoices to a lessee in advance of the dates on which payments are due under a WSR lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not delivered or received.

§ 162.557 Must a WSR lease provide for compensation reviews or adjustments?

(a) For a WSR lease of tribal land, unless the lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the tribe states in its tribal certification or authorization that it has determined that not having reviews and/or adjustments is in its best interest.

(b) For a WSR lease of individually owned Indian land, unless the lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if:

(1) If the term of the lease is 5 years or less;

(2) The lease provides for automatic adjustments; or

(3) We determine it is in the best interest of the Indian landowners not to require a review or automatic adjustment based on circumstances including, but not limited to, the following:

(i) The lease provides for payment of less than fair market rental;

(ii) The lease is for public purposes;

(iii) The lease provides for most or all of the compensation to be paid during the first 5 years of the lease term or before the date the review would be conducted; or

(iv) The lease provides for graduated rent or non-monetary or various types of compensation.

(c) If the conditions in paragraph (a) or (b) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease. The lease must specify:

(1) When adjustments take effect;

(2) Who can make adjustments;

(3) What the adjustments are based on; and

(4) How to resolve disputes arising from the adjustments.

(d) When a review results in the need for adjustment of compensation, the Indian landowners must consent to the adjustment in accordance with § 162.012, unless the lease provides otherwise.

§ 162.558 What other types of payments are required under a WSR lease?

(a) The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.017. The lessee must pay these amounts to the appropriate office.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of this chapter, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or