

**§211.55**

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

after the date it is mailed, whichever is earlier.

(d) The lessee or permittee shall have thirty (30) days (or such longer time as specified in the notice) from the date that the notice is served to respond, in writing, to the official or the Bureau of Indian Affairs office that issued the notice.

(e) If a permittee or lessee fails to take any action that is prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the permittee's or lessee's actions, then the Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(f) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying the permittee's or lessee's actions pursuant to a notice of non-compliance, the Secretary may issue an order of cessation of operations. If the permittee or lessee fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (h), the Secretary may issue an order of lease or permit cancellation.

(g) Cancellation of a lease or permit shall not relieve the lessee or permittee of any continuing obligations under the lease or permit.

(h) Orders of cessation or of lease or permit cancellation issued pursuant to this section may be appealed under 25 CFR part 2.

(i) This section does not limit any other remedies of the Indian mineral owner as set forth in the lease or permit.

(j) Nothing in this section is intended to limit the authority of the authorized officer or the MMS official to take any enforcement action authorized pursuant to statute or regulation.

(k) The authorized officer, MMS official, and the superintendent and/or area director should consult with one another before taking any enforcement actions.

**§211.55 Penalties.**

(a) In addition to or in lieu of cancellation under §211.54, violations of

the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of non-compliance or a cessation order issued by the Secretary, or, in the case of solid minerals the authorized officer, may subject a lessee or permittee to a penalty of not more than \$1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the lessee or permittee either personally or by certified mail to the lessee or permittee at the lessee's or permittee's last known address. The date of service by certified mail shall be deemed to be the date when received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the lessee or permittee of the lessee's or permittee's right to either request a hearing within thirty (30) days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the superintendent and/or area director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the lessee or permittee served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits prescribed for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment in full of penalties more than ten (10) days after a final decision imposing a penalty shall subject the

lessee or permittee to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under §6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the authorized officer, the director's representative or the MMS official to impose penalties for violations of applicable regulations pursuant to 43 CFR part 3160, and 43 CFR Groups 3400 and 3500, 30 CFR part 750, or 30 CFR chapter II, subchapters A and C;

(2) Replacing or superseding any penalty provision in the terms and conditions of a lease or permit approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of lease or permit terms for which the authorized officer, director's representative or MMS official, have either statutory or regulatory authority to assess a penalty.

#### **§211.56 Geological and geophysical permits.**

Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral leases entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian mineral owner under the following conditions:

(a) The permit must describe the area to be explored, the duration, and the consideration to be paid the Indian owner;

(b) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of, or removal of oil and gas, geothermal resources, or other minerals, except samples for assay and experimental

purposes, unless specifically so stated in the permit; and

(c) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information after six (6) years, with the consent of the Indian mineral owner.

#### **§211.57 Forms.**

Leases, bonds, permits, assignments, and other instruments relating to mineral leasing shall be on forms, prescribed by the Secretary, that may be obtained from the superintendent or area director. The provisions of a standard lease or permit may be changed, deleted, or added to by written agreement of all parties with the approval of the Secretary.

#### **§211.58 Appeals.**

Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to 25 CFR part 2.

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