

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 214

RIN 1076-AD34

#### Leasing of Osage Reservation Lands, Oklahoma, for Mining, Except Oil and Gas

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We are revising the regulations for leasing land on the Osage Reservation for mining except oil and gas. The purpose of the revisions is to: make it easier to read and understand; to allow the use of arbitrators to settle damage claims; to make the information required from corporations consistent with parts 211 and 212; to give the Osage Tribe more control and flexibility in negotiating royalty rates for leases; to provide penalties for late reports and payments; and to allow us to order further development of leased land for the benefit of the landowner as is in part 226.

This rule was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand.

**DATES:** Comments by interested parties must be in writing and we must receive them on or before October 7, 1996.

**ADDRESSES:** Mail comments to Gordon Jackson, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1539, Pawhuska, OK 74056.

**FOR FURTHER INFORMATION CONTACT:** Gordon Jackson, Bureau of Indian Affairs at telephone (918) 287-1032.

**SUPPLEMENTARY INFORMATION:** In addition to rewriting this rule in plain English, several significant changes are included in this proposed rule. A brief description of these changes follows. The information in existing § 214.2 Sales of leases, is now found in new § 214.3 How do I negotiate a lease for

mineral mining? This provision has been changed to allow the Superintendent the discretion to extend the due date for the submission of documents, but not the due date for making payment. This change is consistent with 25 CFR part 226. The information in existing § 214.3 Corporate Information, is now found in new § 214.4 What if I am a corporation? The new provision would reduce significantly the amount of information collected from corporations. This new section is also consistent with the recently published 25 CFR Parts 211 and 212 which govern the leasing of the majority of Indian lands for mineral development. Existing § 214.4 Bonds would become § 214.5 What bond must I file? This provision has been changed to allow the Superintendent the discretion to authorize bonds in different amounts than are set in paragraph (a) when circumstances warrant and the interests of the landowner are protected. Existing § 214.10 Royalty rates, which sets specific rates for specific minerals is deleted to allow the Osage Tribal Council maximum flexibility in negotiating leases for their mineral resources in the proposed § 214.9. Also late charges are provided for late payments and a penalty is allowed if reports are submitted late. Proposed § 214.10 gives the Superintendent the authority to require increased development of leased land. This change is made to make this part compatible with 25 CFR part 226. Proposed § 214.12 requires the use of arbitrators to settle claims when a claimant and lessee cannot reach a settlement agreement within a specified time period.

We are publishing this proposed rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rulemaking process by submitting written comments regarding the proposed rules. We will consider all comments received during the public comment period. We will determine necessary revisions and issue the final rule. Please refer to this preamble's **ADDRESSES** section for where you must submit your written comments on this proposed rule.

We certify to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This is not a significant rule under Executive Order 12866 and does not require review by the Office of Management and Budget.

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

The information collection requirements in this part do not require approval by OMB under 44 U.S.C. 3501 et seq.

We determined this proposed rule:

- (a) Will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).
- (b) Does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement is needed under the National Environmental Policy Act of 1969.
- (c) Does not have significant takings implications in accordance with Executive Order 12630.
- (d) Does not have significant federalism effects.

This proposed rule was written by the Bureau of Indian Affairs' Regulatory Review Action Team.

#### List of Subjects in 25 CFR Part 214

Indians—lands, Mining, Mineral resources.

For the reasons given in the preamble, we propose to revise part 214 of Title 25 of the Code of Federal Regulations, as follows:

#### PART 214—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS

Sec.

- 214.1 What definitions should I know?
- 214.2 How can these regulations be changed?
- 214.3 How do I negotiate a lease for mineral mining?
- 214.4 What if I am a corporation?
- 214.5 What bond must I file?
- 214.6 Must I appoint a local representative?
- 214.7 What are the restrictions on mining operations?
- 214.8 Do I have to establish exact locations of mines and buildings?

- 214.9 How and when do I pay rents and royalties?
- 214.10 What happens if I don't develop my leased land as much as possible?
- 214.11 How may I use surface lands?
- 214.12 How are damage claims handled?
- 214.13 How do I transfer or assign a lease?
- 214.14 What happens when I apply to cancel a lease?
- 214.15 Must I maintain records and file reports?
- 214.16 Who can inspect my books and records?
- 214.17 What are the minimum requirements for notices under this part?
- 214.18 Under what conditions may I forfeit a lease?
- 214.19 Under what conditions may I have to pay a fine?

Authority: 92 Stat. 1660.

#### **§ 214.1 What definitions should I know?**

These terms will help you understand sections in this part.

*Lease* means any lease or permit authorizing production of any minerals other than oil and gas.

*Lessee* means any person, firm, or corporation to whom a mining lease is made for other than oil and gas mining.

*Minerals* means coal, limestone, dolomite, sandstone, shale, sand, gravel, clay, and any other minerals, except oil and gas.

*Osage Tribal Council* means the duly elected governing body of the Osage Tribe of Oklahoma vested with authority to lease or take other actions relative to such mining operations.

*Secretary* means the Secretary of the Interior or an authorized representative acting under delegated authority.

*Superintendent* means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or an authorized representative acting under delegated authority.

*You* means the lessee or lease applicant.

#### **§ 214.2 How can these regulations be changed?**

The Secretary may change these regulations at any time through the rulemaking process.

#### **§ 214.3 How do I negotiate a lease for mineral mining?**

(a) If the Secretary approves, you may negotiate a lease for minerals other than oil and gas with the Osage Tribal Council.

(b) Within 30 days from the date of agreement between you and the tribe, you must submit to the Superintendent:

- (1) All money due to the Osage tribe;
- (2) The negotiated lease; and
- (3) Other required documents.

(c) The Superintendent may extend the 30-day due date for the submission of the lease and other documents, but

not the due date for payment of money due the Osage Tribe.

(d) Leases and other documents must be on Departmental forms that the Superintendent furnishes you.

(e) If you don't meet the requirements in this section, the Superintendent will disapprove your lease, and you will forfeit any money you paid to the Osage tribe.

#### **§ 214.4 What if I am a corporation?**

(a) If you are a corporation, you must file:

(1) Evidence of your corporate officers' authority to sign papers; and

(2) With your first application, a certified copy of your Articles of Incorporation; or

(3) If you are incorporated outside the State of Oklahoma, evidence showing that you follow the state's corporation laws.

(b) The Superintendent may require more information to carry out the intent of this part. You must furnish this information within 90 days from the date of the request. If you ask, the Superintendent may extend this deadline.

#### **§ 214.5 What bond must I file?**

(a) With each lease you file, you must furnish a bond of:

- (1) \$1,000 for less than 80 acres;
- (2) \$1,500 for 80 acres up to less than 120 acres;
- (3) \$2,000 for 120–160 acres;
- (4) \$500 for each additional 40 acres above 160 acres.

(b) With the Osage Tribal Council's consent, the Superintendent may authorize a bond for a different amount.

(c) You may file a collective bond for \$15,000 to cover all your leases. The Superintendent may change the amount of this bond, and the Secretary may require another bond, at any time.

#### **§ 214.6 Must I appoint a local representative?**

Yes. Before you can start developing or drilling on leased land, you must appoint a representative who lives in Oklahoma and give the Superintendent your representative's name and post office address. The Superintendent or other authorized person in the Department will communicate with your representative to make sure you are following the requirements of this part.

#### **§ 214.7 What are the restrictions on mining operations?**

(a) You may mine or prospect on your land only after the Superintendent approves the lease for that land and delivers it to you.

(b) You may mine or prospect within or on any homestead selection only with the Superintendent's written consent.

(c) You may abandon a well or mine only with the Superintendent's written approval.

(d) If you disagree with the surface owner or other lessees about operations likely to cause injury to anyone, you must follow the Superintendent's decision, unless you file an appeal under 25 CFR part 2.

#### **§ 214.8 Do I have to establish exact locations of mines and buildings?**

Yes, if the Superintendent asks, you must file a plat of your leases showing the exact locations of all mines, proposed locations, power houses, etc. If you disagree with the surface owner or another mineral lessee about the locations of wells, mines, buildings, plants, etc., the Superintendent will determine them after investigating and taking into account that the person holding a lease with an earlier approval date has the first right to a location.

#### **§ 214.9 How and when do I pay rents and royalties?**

(a) Before your lease is approved, the Osage Tribal Council must set royalties for all minerals other than oil and gas, and the Superintendent must approve them.

(b) If any money is due under a lease contract or this part, you or the purchaser must pay it in cash or by a check made payable to the Bureau of Indian Affairs and delivered to the Osage Agency, P.O. Box 1539 Pawhuska, Oklahoma 74056.

(c) Any money you owe to the Bureau becomes a lien on all equipment and unsold minerals on your leased land.

(d) You must prepare a sworn report from accurate records covering all exploration and mining operations and pay royalties for each month by the 25th day of the following month.

(e) If you are late, you must pay a late charge of 1.5 percent for each month or part of a month until your payment is received unless the Osage Tribal Council, with the Superintendent's approval, waives your late charge.

(f) If you don't pay or submit a report, the Superintendent may fine you \$100 per day or cancel your lease.

#### **§ 214.10 What happens if I don't develop my leased land as much as possible?**

The Superintendent may order increased development of any leased acreage if he or she believes a prudent operator would develop it further. If you don't follow this order, the Superintendent may consider your refusal a violation of the lease terms and cancel your lease.

**§ 214.11 How may I use surface lands?**

(a) You may use as much of the surface of your leased land as you reasonably need for prospecting and mining operations, including buildings those operations require.

(b) You have the right-of-way over and across the leased land to any point of prospecting or mining operations.

(c) You may use timber from restricted land only if you have a written agreement with the owner and the Superintendent's approval.

(d) In using surface land, you must cause the least possible injury and inconvenience to its allottee or owner. And you must pay for all reasonable damages you cause to the surface land or to growing crops or improvements on it, according to § 214.12 of this part.

**§ 214.12 How are damage claims handled?**

(a) The owners of surface land you are leasing must notify other lessees and tenants of the regulations in this part and of the procedure they must follow in all cases of alleged damages. If the surface owners authorize it in writing, those lessees or tenants may represent the owners.

(b) Any person other than a lessee or an allottee or the heirs of a deceased allottee claiming an interest in any leased tract or in damages to it, must state that claim in writing to the Superintendent. Anyone who doesn't have waived notice and lost the right to claim any part of disbursed damages.

(c) The Superintendent will apportion damages among those interested in the surface as owner, oil and gas lessee, or otherwise, as they may agree or as the percentage of their interests establishes. If these people are unable to agree, arbitration must determine how to apportion damages.

(d) Anyone who suffers injury must, as soon as possible after discovering any damage, serve written notice to you or your authorized representative. This requirement doesn't limit the time for bringing an action to the courts to less than the 90-day period allowed by Section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479). The written notice must contain:

- (1) The nature and location of the alleged damage;
- (2) The date this damage occurred;
- (3) The names of those who caused the damage; and
- (4) The amount claimed.

(e) If you haven't already adjusted the alleged damages when you receive the notice, you or your representative must try to adjust the claim with the claimant within 20 working days from that date. If the claimant is the owner of restricted property and a settlement results, you

must file a copy of the settlement agreement with the Superintendent for approval.

(f) If the Superintendent approves the settlement agreement, you must pay damages to the Superintendent for the claimant's benefit. In settlement of damages on restricted land, you must pay all sums to the Superintendent for credit to the account of the Indian who is entitled to them. The Superintendent will apportion the money between the Indian surface owner or owners and the surface Lessee of record.

(g) If you don't adjust the claim within 20 days of the written notice, you and the claimant each must appoint a disinterested arbitrator within 10 more days. All of a surface owner's other lessees may join in appointing the owner's arbitrator. The arbitrators must appoint a third disinterested arbitrator within 10 days. If they can't agree by this deadline, they must immediately notify the claimant and you. If you and the claimant can't agree on a third arbitrator within five days of their notice, the Superintendent will appoint the third arbitrator. You and the claimant each pay the fee and expenses of the arbitrator you appoint, but you both share equally the third arbitrator's fee and expenses.

(h) As soon as the third arbitrator is appointed, the arbitrators must meet, hear evidence and arguments, and examine lands, crops, improvements, or other property alleged to have been injured. Within 10 days they must decide how much damage money is due.

(i) Any two arbitrators may decide the amount of damages due and present their written decision to you and the claimant. Either of you may file an action in a court of competent jurisdiction within 90 days of the date the decision is served. If no one files an action within 90 days, and the award is against you or your representative, you must pay the award plus interest within 10 days after the filing deadline. Interest is at an annual rate established by the Internal Revenue Service.

(j) You or your representative must file with the Superintendent a report on each settlement agreement, including the nature and location of the damage, date and amount of the settlement, and other pertinent information.

**§ 214.13 How do I transfer or assign a lease?**

(a) You may transfer or assign a lease, or any interest in a lease, only with the Superintendent's approval. Otherwise, the transfer or assignment is void, and the Superintendent may cancel your lease.

(b) The person who receives the transferred or assigned interest must—

(1) Follow the terms and conditions of the original lease, the regulations under which that lease was approved, and any other requirements the Superintendent may prescribe; and

(2) Furnish with the transfer or assignment a bond that meets the requirements in section § 214.5.

**§ 214.14 What happens when I apply to cancel a lease?**

When you apply to cancel all or part of a lease:

(a) You must pay all royalties or rentals due;

(b) You must surrender any part of the lease that was delivered to you;

(c) If a new lease year has begun, you have to pay any required advance rentals for that year; and

(d) If you have already paid advance rentals, you won't get any refund.

**§ 214.15 Must I maintain records and file reports?**

Yes. If you hold a lease, transfer, or assignment for mineral mining, you must:

(a) Keep records and file reports required by section § 214.9; and

(b) If you are a corporation:

(1) Send a statement to the Superintendent on January 1 of each year or whenever else the Superintendent asks for one. The statement must contain the information required by § 214.4 and show any changes in officers, as well as changes in or additions to stockholders; and

(2) File any other information within a reasonable time, if the Superintendent considers it necessary to carry out the regulations in this part.

**§ 214.16 Who can inspect my books and records?**

The Superintendent may enter your leased premises to inspect any part of your mining operation, and your books and records must be open at all times for the Superintendent's examination.

**§ 214.17 What are the minimum requirements for notices under this part?**

A notice under this part meets requirements if it is mailed to the last known address of the person who must receive the notice. Deadline times begin running on the day after the mailing or from the date of delivery, unless the Superintendent increases the time allowed.

**§ 214.18 Under what conditions may I forfeit a lease?**

As a lessee or assignee, you may forfeit a lease if you don't follow any regulation or any obligation in your

lease or assignment. The Superintendent may cancel and annul your lease without court action or any other proceeding. But the Superintendent must give you at least 30 days' notice to show why your lease shouldn't be canceled and annulled or why you shouldn't receive any other penalty.

**§ 214.19 Under what conditions may I have to pay a fine?**

(a) If you violate any of your lease's terms and conditions or any regulations on leases, the Superintendent may:

(1) Cancel your lease;

(2) Fine you no more than \$500 per day for every day you violate the terms of the lease or regulations or don't carry out the Superintendent's orders regarding your lease; or

(3) Fine you and cancel your lease.

(b) You are entitled to notice and a hearing on the terms of the lease or regulations that you have violated. The Superintendent will hold the hearing to reach a final decision. The Superintendent's findings are final, unless you appeal under 25 CFR part 2.

Dated: July 23, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

#### RIN 2900-AI35

#### Diseases Associated With Exposure to Certain Herbicide Agents (Prostate Cancer and Acute and Subacute Peripheral Neuropathy)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases for which there is no record of the disease during service. This proposed amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by the Agent Orange Act of 1991 that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy. The intended effect of this proposed amendment is to establish

presumptive service connection for those conditions based on herbicide exposure.

**DATES:** Comments must be received on or before September 9, 1996.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington DC 20420. Comments should indicate that they are in response to "RIN 2900-AI35." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7230.

**SUPPLEMENTARY INFORMATION:** Section 3 of the Agent Orange Act of 1991, Pub. L. 102-4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102-4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 1116(b) of 38 U.S.C., which was added by Pub. L. 102-4, provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association exists between exposure of humans to a herbicide agent (i.e., a chemical in a herbicide used in support of the United States and allied military operations in

the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. An association is considered "positive" if the credible evidence for the association is equal to or outweighs the credible evidence against the association. In making that determination, the Secretary is to consider the reports received from NAS as well as all other available sound medical and scientific information and analyses.

NAS issued its initial report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam" (VAO), on July 27, 1993. The Secretary subsequently determined that positive associations exist between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma and certain respiratory cancers. Final regulations were published in the Federal Register on February 3, 1994 (See 59 FR 5106-07) and June 9, 1994 (See 59 FR 29723-24) creating presumptions of service connection for these conditions based on herbicide exposure. Presumptions already existed for chloracne, non-Hodgkin's lymphoma and soft tissue sarcomas.

After reviewing the latest scientific studies and conducting a public meeting, NAS issued a second report, entitled "Veterans and Agent Orange: Update 1996," on March 14, 1996. On the same day, the Secretary announced that VA would review the findings in that second NAS report and pertinent studies to determine whether a positive association exists between herbicide exposure and any condition for which the Secretary has not specifically determined a presumption of service connection is warranted. That review has been completed and the Secretary has concluded that positive associations exist for prostate cancer and acute and subacute peripheral neuropathy.

Prostate cancer is a very common male genitourinary cancer which shows marked increased prevalence with age. The 1993 NAS report assigned prostate cancer to a category labeled limited/suggestive evidence of an association. This is defined as meaning there is evidence suggestive of an association between herbicide exposure and a particular health outcome, but that evidence is limited because chance, bias, and confounding could not be ruled out with confidence. There were statistically significant occupational studies which showed no association between prostate cancer and herbicide