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List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 880 be amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section § 880.5130 is revised to read as follows:

§ 880.5130 Infant radiant warmer.

(a) *Identification.* The infant radiant warmer is a device consisting of an infrared heating element intended to be placed over an infant to maintain the infant's body temperature by means of radiant heat. The device may also contain a temperature monitoring sensor, a heat output control mechanism, and an alarm system (infant temperature, manual mode if present, and failure alarms) to alert operators of a temperature condition over or under the set temperature, manual mode time limits, and device component failure, respectively. The device may be placed over a pediatric hospital bed or it may be built into the bed as a complete unit.

(b) *Classification.* Class II (Special Controls). (1) Association for the Advancement of Medical Instrumentation (AAMI) Voluntary Standard for Infant Radiant Warmers; (2) prescription statement in accordance with 21 CFR 801.109 (restricted to use by or upon the order of qualified practitioners as determined by the States); (3) labeling for use only in health care facilities and only by persons with specific training and experience in the use of the device.

Dated: August 1, 1996.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 96-21846 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 215

RIN 1076-AD35

Lead and Zinc Mining Operations and Leases on Quapaw Indian Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our regulations for lead and zinc mining. The purpose is to update the

operations and procedures for the leasing of and operations for the discovery, testing, development, mining, and processing of all lead and zinc minerals on the lands of Quapaw Indians under the jurisdiction of the Miami Agency in Ottawa County, Oklahoma. This action is to assist Indians with the orderly and efficient development of their natural resources of lead and zinc deposits, and to insure operations are conducted without loss or damage to the environment or other resources.

DATES: You may send us written comments. We must receive them by October 28, 1996.

ADDRESSES: You must mail or hand carry your comments to Terrance Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street N.W., MS 4513-MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John Dalgarn, Bureau of Indian Affairs, Miami Agency, P.O. Box 391, Miami, OK 74355-0391; telephone (918) 542-3396.

SUPPLEMENTARY INFORMATION: We are publishing this revised 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 on the proposed rule. 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 have certified 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 rule is not a significant rule under Executive Order 12866 and does not require approval by the Office of Management and Budget.

We determined this proposed rule:

(a) 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;

(b) Does not have significant takings implications in accordance with Executive Order 12630;

(c) Does not have significant federalism effects.

(d) 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.*); and

(e) 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 contained in this rule do not require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is John Dalgarn, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 215

Indian-lands, Lead, Zinc.

For the reasons set out in the preamble, we propose to revise Part 215 of Title 25 of the Code of Federal Regulations, as follows:

Part 215—Lead and Zinc Mining Operations and Leases on Quapaw Indian Lands

Sec.

215.0 Definitions.

215.1 Purpose.

215.2 Scope.

215.3 No operations until a lease is approved.

215.4 How are leases offered?

215.5 How are lands selected for a lease auction?

215.6 How do we advertise the lease auction?

215.7 How do I bid for a lease?

215.8 What must your bid include?

215.9 How do we conduct public auctions?

215.10 What happens after the public auction?

215.11 What happens if we reject your bid or do not award you a lease?

215.12 What happens if you fail to execute a lease?

215.13 How are royalty rates determined?

215.14 Who do you pay?

215.15 Who pays the gross production tax due to the State of Oklahoma?

215.16 Lessee must have local representation.

215.17 How long are leases?

215.18 What forms are used?

215.19 Who can execute (sign) leases?

215.20 What is required for corporate leases?

215.21 What bonds are needed?

215.22 Can leases be assigned?

215.23 Can leases of developed land be extended?

215.24 Will we deny requests for lease extensions?

215.25 Can new leases be granted if a lease has been forfeited or abandoned?

215.26 Exploration and mining operations.

215.27 When can operations and production be suspended?

215.28 Who owns the mine tailings?

215.29 How are mine tailings disposed of?

215.30 What can chat be used for?

Authority: Sec. 26, 41 Stat. 1248; 50 Stat. 68; Sec. 2, 53 Stat. 1127; 84 Stat. 325; 104 Stat. 206.

§ 215.0 Definitions.

Allottee means an Indian that has been allotted land, or an Indian owner of land or interest as an heir or devisee in unpartitioned lands under the supervision of the Government.

BLM means Supervisor, Geologic, Engineering and Mining Services Team of the Bureau of Land Management.

Chat means the piles of mine waste and gravity concentration tailings resulting from the operation of the lead-zinc mines.

Incompetent Indian means an Indian who we declared unable to improve or manage his or her restricted or trust lands. This includes minors and those Indians who are incompetent under State law.

Leased lands, leased premises, or leased tract means restricted or trust lands under a lease.

Lessee means any person, firm, or corporation, their legal representatives, heirs, or assigns, who has obtained a lease.

Lessor means any Indian owning or having an interest in restricted or trust allotted or inherited lands that has been leased.

Mining operations means drilling, mining, or construction on leased lands.

We means the U.S. Government, Department of the Interior, Bureau of Indian Affairs, and anyone who is authorized to represent us in matters covered in this part.

You means an allottee, lessee, lessor, or other interested persons.

§ 215.1 Purpose.

The purpose of the regulations in this part is to assist you with the orderly and efficient development and production of your natural resources (lead and zinc) without waste or avoidable loss of or damage to deposits; avoid, minimize or correct damage to the environment, land, water and air or other resources; and to obtain a proper record and accounting of all minerals produced.

§ 215.2 Scope.

The regulations in this part apply to the leasing of and operations for the discovery, testing, development, mining, and processing of all lead and zinc minerals on Quapaw Indian lands under the supervision and jurisdiction of the Miami Agency, Oklahoma.

§ 215.3 No operations until a lease is approved.

No operations are allowed upon any restricted or trust lands allotted to or inherited by an Indian until we approve

the lease covering the land and the activity.

§ 215.4 How are leases offered?

We will offer lead and zinc mining leases at public auction to the highest responsible bidder.

§ 215.5 How are lands selected for a lease auction?

(a) Any one or a combination of Indian owners may request us to offer the lead and zinc minerals on any of their restricted or trust lands for sale at a lease auction.

(b) Before a tract of unpartitioned land will be offered for lease at a public auction, a majority of the interest owners must agree to the request.

§ 215.6 How do we advertise the lease auction?

(a) We will publish at least four notices starting 30 days before the public auction. The notices will be in a newspaper of general circulation in the county where the land is located, and in at least one nationally circulated mining trade journal.

(b) The public auction notice will include the following information:

- (1) Date of auction;
- (2) Time of auction;
- (3) Place of auction; and
- (4) How, who, and where to obtain information on participation in the auction.

§ 215.7 How do I bid for a lease?

(a) You may submit sealed bids by mail to the address in the notice. We must receive your bid before the public auction begins.

(b) You may submit your bid at the public auction.

(c) You may authorize an agent to submit your bid at the public auction. The agent must have your power of attorney to bid for you.

§ 215.8 What must your bid include?

Bids must include:

- (a) Your offer of the stipulated and fixed royalty;
- (b) Your bonus payment offer; and
- (c) Cashier's check payable to us in the amount of one year rental and 25 percent of your bonus payment offer.

§ 215.9 How do we conduct public auctions?

(a) At the announced auction time, we will announce the bidder, the amount, and terms of each sealed bid received.

(b) After the announcement of the sealed bids, public bidding will begin. All bidders present can bid, whether or not you submitted a sealed bid. Bidding is only on the bonus payment.

(c) At the conclusion of public bidding, we will determine the highest and best bid as the highest bonus offer.

(d) We reserve the right to reject any or all bids.

§ 215.10 What happens after the public auction?

(a) We review and select the highest and best bid for each tract offered in the auction.

(b) We inform the owners of the bid selections.

(c) We inform the owners of the estimated reasonable mining value of their lands and other necessary information to fully advise them of the current status and mining potential of their lands.

(d) The owners accept the bid offer and execute (sign) the lease.

(e) We will notify you when you are awarded a lease.

(f) You will have 30 days after notice to execute the lease by the terms of your bid and the regulations in this part.

(g) We will finalize the lease documents by approving the completed lease package.

§ 215.11 What happens if we reject your bid or do not award you a lease?

If your bid is not accepted or you are not awarded a lease, your bid deposit will be returned to you.

§ 215.12 What happens if you fail to execute a lease?

If we award you a lease and you fail to execute it, you will forfeit the money included with your bid. We will give these funds to the land owner(s).

§ 215.13 How are royalty rates determined?

(a) If a lease is offered for sale at public auction, we will set the royalty rate before the auction at a fixed percentage of gross proceeds of all lead and zinc ores and concentrates extracted. We will determine the royalty rate for each lease individually.

(b) If a lease is not offered for sale at public auction, we will determine the royalty rate or approve a negotiated rate for each lease.

(1) The royalty rate must not be less than the highest and best obtainable market price for lead and zinc ores and concentrates. We will determine this minimum price at the usual and customary disposal points at the time of the sale.

(2) We reserve the right to determine the market price if it is necessary to protect the interests of the Indian lessor.

(3) We reserve the right, when it is in the best interest of the Indian lessor, to require you to store the royalty share of ore instead of selling it. If we do this,

we will notify you in advance. You must store the ore in your ore bins at no cost to the lessor. You will not be required to store more than one-third of your bin capacity or for longer than 6 months.

§ 215.14 Who do you pay?

We must collect all payments for rents, royalties, bonus, and any other payments. We will then deposit the funds to the credit of the Indian lessor(s).

§ 215.15 Who pays the gross production tax due to the State of Oklahoma?

(a) We will pay the Indian owners share of the gross production tax to the State from their royalty income.

(b) You are responsible to pay your share of the gross production tax.

§ 215.16 Lessee must have local representation.

(a) You must designate a local or resident representative within Ottawa County, Oklahoma. You must also give us the representative's name and mailing address.

(b) We will notify and communicate with your local representative in securing compliance with our regulations and the terms of your lease.

(c) You must designate a substitute local representative if the primary representative is not available to us.

(d) If no designated local representative is available, any of your employees, contractors, or other person in charge of mining operations on the leased land will be considered your local representative for the purpose of serving a notice to you.

(e) We will consider you to be notified when we mail the notice to you or your local representative's last known address.

(f) Your response time begins with the day a notice is mailed or received in person by you or your local representative.

§ 215.17 How long are leases?

Lead and zinc mining leases can be for 10 years. We may limit leases to less than ten years.

§ 215.18 What forms are used?

We will prescribe the appropriate form for applications, leases, other information, and collection requirements.

§ 215.19 Who can execute (sign) leases?

(a) A lease contract can be executed by competent adult Indian owners.

(b) We will execute and approve leases for:

- (1) Minors;
- (2) Incompetent owners;

- (3) Undetermined heirs of a decedent's estate;
- (4) Owners who can not be located; and
- (5) Owners who have given us written authority to sign for them.

§ 215.20 What is required for corporate lessees?

(a) If the applicant for a lease is a corporation, your first application must include evidence that your officers can execute the lease. You must also submit:

(1) A certified copy of your articles of incorporation;

(2) If you are not a Oklahoma corporation, evidence that you are in compliance with the corporation laws where you are incorporated;

(3) List of officers, principal stockholders, and directors, with their addresses and the number of shares they possess;

(4) A sworn statement of your officers showing:

(i) The total number of shares of capital stock issued and the amount of cash recovered into your treasury for each share sold or, if paid in property, the kind, quantity, and value paid per share;

(ii) The amount per share of sold stock that is not paid for and subject to assessment;

(iii) The amount of cash in your treasury and elsewhere and its source;

(iv) The value of your property; and

(v) The amount of your indebtedness and the nature of your obligations.

(b) You must submit a statement of changes in officers and stockholders by January 1 of each year. We may request this statement at other times during the year also.

(c) We may require individual stockholders to provide affidavits on the companies or persons or firms that have interest in lead and zinc mining leases or Indian land in Ottawa County, Oklahoma, and if the stock is held in trust or not.

(d) If you are required to submit any other applications, you will only have to show the aggregate amounts of your assets and liabilities.

§ 215.21 What bonds are needed?

(a) Lessees must provide a surety bond when executing a lead and zinc lease.

(b) The surety bond must be with a surety company(s) that is acceptable to us.

(c) The amount of the surety must guarantee the payment of all deferred installments of the bonus, royalties, rentals, and the performance of all covenants and agreements by you.

- (d) The amount of the surety must cover the costs of repair and restoration of the surface and natural resources.
- (e) Minimum bond amounts are:

Acreage of lease	Minimum amount of bond
Less than 80 acres	\$50,000
More than 80 but less than 120 acres	100,000
120 or more acres	250,000

(f) We may reduce the amount of the bond below the minimum amounts with the consent of the lessor.

(g) You may execute a penal bond to us with your power of attorney in lieu of a surety. You can then submit United States bonds or notes in the total amount prescribed in paragraph (c) of this section.

(h) You may provide one aggregate bond instead of several individual bonds to cover all leases you have. We will determine the amount of the aggregate bond.

(i) We may increase the amount of any bond if necessary to protect the interests of the Indian lessor.

§ 215.22 Can leases be assigned?

(a) Yes. Leases can be assigned, subleased, or sublet only with our approval of the terms and conditions of the assignment, sublease, and, or subletting contract.

(b) You must notify us of any proposed assignment. The assignee must submit a financial statement and bond. We will then notify all restricted Indian land owners of the proposed assignment. They will have ten days to file written objections to the assignment. We will then approve or disapprove the assignment.

(c) The assignee must provide a bond per § 215.21.

§ 215.23 Can leases of developed land be extended?

(a) Yes. If you request and it is in the best interest of the Indian lessor, we may approve a new lease or extend an existing lease.

(b) New leases or extensions can be granted to lessees, assignees, sublessees, mining contractors, or other parties who have expended capital in the mining or development operations under the existing lease.

(c) New leases or extensions are executed per § 215.19.

(d) We must approve the bonus payment and royalty for the new lease or extension.

(e) We will not consider a request for a new lease or extension until the final year of the existing lease.

§ 215.24 Will we deny requests for lease extensions?

(a) Yes. If any of the following circumstances exist, we may deny your request:

(1) If a new lease or extension is not in the best interest of the Indian lessor;

(2) If any of the land under the extension request is encumbered by another existing lease, sublease, assignment, or mining contract; or

(3) If any owner or person claiming rights or interests files an objection.

(b) We will notify you about requests for extensions if our records or the district court records show you have rights or interest in any land involved.

(c) You will have 10 days to submit your objection to the extension after receipt of our notice.

(d) If an objection is submitted, they will have 20 days to submit a statement supporting their objection.

(e) The extension applicant will have 10 days to defend their application from objections.

(f) We will decide to approve or deny the extension based on the facts we receive.

§ 215.25 Can new leases be granted if a lease has been forfeited or abandoned?

Yes. If a lease on land where lead and zinc ores were discovered was canceled, forfeited, or expired, we can approve a new lease. If you apply for a new lease, your application must contain special offers for the terms and conditions of the new lease.

(a) We will consider your offer and if it is in the best interest of the Indian owner(s), we will approve it.

(b) If your offer is not in the best interest of the Indian owner(s), we will reject your offer.

(c) We will then proceed to offer the lease for sale at public auction described in § 215.9.

§ 215.26 Exploration and mining operation.

(a) Lessees must provide the BLM all notices, reports, drill logs, maps, records, and other information on mining operations required by us. The BLM will maintain a file for us.

(b) The files maintained by the BLM will be available for inspection by employees of BIA. Employees of the BLM will provide the BIA any information and technical advice we need. The BIA will provide the same service to the employees of the BLM.

(c) The BLM will not issue orders to Indian lessors. The BLM does have the authority to issue and amend orders to mining operators on production and operations. These orders will be prepared cooperatively with the BIA.

(d) Leases granted or approved under this part shall be subject to the

provisions found in 43 CFR Parts 3590 through 3599, inclusive, and are implemented in this part with relationship to:

- (1) Exploration and mining operations.
- (2) Obligations of lessees and permittees.
- (3) Maps and plans.
- (4) Bore holes and samples.
- (5) Mining methods.
- (6) Protection against mining hazards.
- (7) Milling waste from mining or milling.
- (8) Production records and audit.
- (9) Inspection, issuance of orders, and enforcement of orders.
- (10) Late payment or underpayment of charges.

§ 215.27 When can operations and production be suspended?

We may authorize the suspension of the operating and producing requirements on mining leases for minerals other than oil and gas whenever we find that marketing facilities are inadequate or economic conditions unsatisfactory. You may apply for relief from all operating and producing requirements to the BLM in triplicate and give a copy to us. Complete information must be furnished showing the necessity for relief. Suspension of operations and production will not relieve you from the obligations of continued payment of the annual rental or the minimum royalty.

§ 215.28 Who owns the mine tailings?

Mine tailings, mine refuse, "chat" and tailing piles are the property of the lessors from whose lands the ores were removed and in the percentage attributed thereto.

§ 215.29 How are mine tailings disposed of?

Disposal of mine tailings, mine refuse, "chat" or tailing piles for purposes other than the recovery of lead and zinc concentrates must be in the methods and manner we decide is appropriate and in the best interest of the Indian owners.

§ 215.30 What can chat be used for?

(a) Chat must only be used for applications that are within one of the following categories:

- (1) Applications that bind the chat into a durable product (for example, use as an aggregate in batch plants preparing asphalt or concrete);
- (2) Applications where the chat is applied below paving on asphalt or concrete roads or parking lots;
- (3) Applications where the chat is used as a raw product for manufacturing

a safe product (for example, glass manufacturing); or

(4) Applications where the chat is covered with at least twenty-four (24) inches of clean material in areas that are not likely to be used for residential or public area development (for example, deep fill on industrial sites).

(b) Any other applications, including residential applications, are prohibited. Use of chat for any unauthorized applications may result in immediate termination of a chat purchase contract, prosecution for trespass, or other sanctions.

(c) Contracts for the sale or disposal of chat under this part are subject to the provisions in 25 CFR part 216.

Dated: August 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-21741 Filed 8-26-96; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0003-95]

RIN 1545-AT92

Source of Income From Sales of Inventory and Natural Resources Produced In One Jurisdiction and Sold In Another Jurisdiction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (INTL-0003-95) which was published in the Federal Register on Monday, December 11, 1995 (60 FR 63478). The notice of proposed rulemaking relates to the source of income from sales of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:
Background

The notice of proposed rulemaking that is subject to these corrections is under section 863 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (INTL-0003-95) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (INTL-0003-95) which is the subject of FR Doc. 95-30087 is corrected as follows:

1. On page 63480, column 2, in the preamble, under the heading "1. Export Terminal Rule", the second full paragraph, line 12, the language "production activity following export. A" is corrected to read "production activity as defined in § 1.863-1(b)(3)(ii) following export. A".

2. On page 63483, column 3, in the preamble, under the heading "3. Determination of Source of Gross Income", line 3 from the top of the column, the language "are located where the tangible" is corrected to read "are located where the taxpayer's tangible".

3. On page 63483, column 3, in the preamble, under the heading "3. Determination of Source of Gross Income", the fourth full paragraph, line 8, the language "sit us of economic activity. Accordingly," is corrected to read "situs of economic activity. Accordingly,".

§ 1.863-1 [Corrected]

4. On page 63485, column 2, § 1.863-1 (b)(1) introductory text, line 2, the language "Except to the extent provided in" is corrected to read "Notwithstanding any other provision, except to the extent provided in".

§ 1.863-2 [Corrected]

5. On page 63486, column 3, § 1.863-2 (b), lines 15 and 16, the language "paragraph (a)(2) of this section, see § 1.863-3. However, the principles of" is corrected to read "paragraph (a)(2) of this section, see § 1.863-1 for natural resources and § 1.863-3 for other inventory. However, the principles of".

§ 1.863-3 [Corrected]

6. On page 63487, column 3, § 1.863-3 (b)(2)(iv), paragraph (i) of *Example 1.*, line 4, the language "country X to D, a unrelated foreign clothing" is corrected to read "country X to D, an unrelated foreign clothing".

7. On page 63488, column 2, § 1.863-3 (c)(1)(i)(B), line 4, the language "intangible assets owned by the taxpayer" is corrected to read