

§ 281.22

bonus bid. When payment of a portion of the bid is deferred, the successful bidder shall also file a bond to guarantee payment of the deferred portion as required in § 281.33. Deposits shall be refunded on high bids subsequently rejected. When three copies of the lease have been executed by the successful bidder and returned to the Director, the lease shall be executed on behalf of the United States; and one fully executed copy shall be transmitted to the successful bidder.

(c) If the successful bidder fails to execute the lease within the prescribed time or to otherwise comply with the applicable regulations, the successful bidder's deposit shall be forfeited and disposed of in the same manner as other receipts under the Act.

(d) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, the deposit shall be refunded.

(e) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder shall submit with the executed lease, evidence that the agent is authorized to act on behalf of the bidder.

§ 281.22 Lease form.

The OCS mineral leases shall be issued on the lease form prescribed by the Secretary in the leasing notice.

§ 281.23 Effective date of leases.

Leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor except that, upon written request, a lease may be dated and become effective as of the first day of the month within which it is signed on behalf of the lessor.

Subpart C—Financial Considerations

§ 281.26 Payments.

(a) For sealed bids, a bonus bid deposit of a specified percentage of the total amount bid is required to be submitted with the bid. The percentage of bonus bid required to be deposited will be specified in the leasing notice. The remittance may be made in cash or by

Federal Reserve check, commercial check, bank draft, money order, certified check, or cashier's check made payable to "Department of the Interior—MMS." Payment of this portion of the bonus bid may not be made by Electronic Funds Transfer.

(b) For oral bids, a bonus bid deposit of a specified percentage of the total amount bid must be submitted to the official designated in the leasing notice following the completion of the oral bidding. The percentage of bonus bid required to be deposited will be specified in the leasing notice. Payment of this portion of the bonus bid shall be made by Electronic Fund Transfer within the timeframe specified in the leasing notice.

(c) The deposit received from high bidders will be placed in a Treasury account pending acceptance or rejection of the bid. Other bids submitted under paragraph (a) of this section will be returned to the bidders. If the high bid is subsequently rejected, an amount equal to that deposited with the high bid will be returned according to applicable regulations.

(d) The balance of the winning bonus bid and all rentals and royalties must be paid in accordance with the terms and conditions of this part, the Leasing Notice, and Subchapter A of this chapter.

(e) For each lease issued pursuant to this subpart, there shall be one person identified who shall be solely responsible for all payments due and payable under the provisions of the lease. The single responsible person shall be designated as the payor for the lease and shall be so identified on the Solid Minerals Payor Information Form (MMS-4030) in accordance with § 210.201 of this title. The designated person shall be responsible for all bonus, rental, and royalty payments.

(f) Royalty shall be computed at the rate specified in the leasing notice, and paid in value unless the Secretary elects to have the royalty delivered in kind.

(g) For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the lease year in which production royalty is

paid (whether the full amount specified in the lease or ½ the amount specified in the lease pursuant to §281.28(b) on this part) of OCS minerals produced (sold, transferred, used, or otherwise disposed of) from the leasehold.

(h) Unless stated otherwise in the lease, product valuation will be in accordance with the regulations of this chapter. The value used in the computation of royalty shall be determined by the Director. The value, for royalty purposes, shall be the gross proceeds received by the lessee for produced substances at the point the product is produced and placed in its first marketable condition, consistent with prevailing practices in the industry. In establishing the value, the Director shall consider, in this order: (1) The price received by the lessee; (2) commodity and spot market transactions; (3) any other valuation method proposed by the lessee and approved by the Director; and (4) value or cost netback. For non-arm's length transactions, the first benchmark will only be accepted if it is not less than the second benchmark.

(i) All payors must submit payments and payment information forms and maintain auditable records in accordance with the following Royalty Management regulations of this title:

Section 210.200—Required recordkeeping.

Section 210.201—Solid minerals payor information form.

Section 210.202—Report of sales and royalty remittance—solid minerals.

Section 210.203—Special forms and reports.

Section 212.200—Maintenance of and access to records.

Section 217.250—Audits.

Section 218.40—Assessments for incorrect or late reports and failure to report.

Section 218.50—Timing of payment.

Section 218.51—Method of payment.

Section 218.52—Designated payor.

Section 218.56—Definitions.

Section 218.150—Royalties, net profit shares, and rental payments.

Section 218.151—Rentals.

Section 218.155—Method of payment.

Section 218.202—Late payment or underpayment charges.

Section 241.20—Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

§ 281.27 Annual rental.

(a) The annual lease rental shall be due and payable in accordance with the

provisions of this section. No rental shall be due or payable under a lease commencing with the first lease anniversary date following the commencement of royalty payments on leasehold production computed on the basis of the royalty rate specified in the lease except that annual rental shall be due for any year in which production from the leasehold is not subject to royalty pursuant to §281.28.

(b) Unless otherwise specified in the leasing notice and subsequently issued lease, no annual rental payment shall be due during the first 5 years in the life of a lease.

(c) The lessee shall pay an annual rental in the amount specified in the leasing notice and subsequently issued lease not later than the last day prior to the commencement of the rental year.

(d) A rental adjustment schedule and amount may be specified in a leasing notice and subsequently issued lease when a variance is warranted by geologic, geographic, technical, or economic conditions.

§ 281.28 Royalty.

(a) The royalty due the lessor on OCS minerals produced (i.e., sold, transferred, used, or otherwise disposed of) from a lease shall be set out in a separate schedule attached to and made a part of each lease and shall be as specified in the leasing notice. The royalty due on production shall be based on a percentage of the value or amount of the OCS mineral(s) produced, a sum assessed per unit of product, or other such method as the Secretary may prescribe in the leasing notice. When the royalty specified is a sum assessed per unit of product, the amount of the royalty shall be subject to an annual adjustment based on changes in the appropriate price index, when specified in the leasing notice. When the royalty is specified as a percentage of the value or amount of the OCS minerals produced, the Secretary will notify the lessee when and where royalty is to be delivered in kind.

(b) When prescribed in the leasing notice and subsequently issued lease, royalty due on OCS minerals produced from a leasehold will be reduced for up to any 5 consecutive years, as specified