

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF MINERALS MANAGEMENT

LEASING STATE-OWNED NONMETALLIC MINERAL RIGHTS

Filed with the Secretary of State on January 3, 2019

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of natural resources by sections 502 and 504 of 1994 PA 451, MCL 324.502 and 324.504)

R 299.4021, R 299.4022, R 299.4023, R 299.4024, R 299.4025, R 299.4026, and R 299.4027 of the Michigan Administrative Code are amended as follows:

R 299.4021 Definitions.

Rule 1. As used in these rules:

(a) "Auction lease" means a lease issued as the result of competitive bidding at public auction that grants the lessee the exclusive right to pursue exploration, mining, or production of the leased nonmetallic mineral rights.

(b) "Bonus" means a payment by the proposed lessee to the department at the time of leasing as part of the consideration for acquisition of a nonmetallic minerals lease.

(c) "Department" means the Michigan department of natural resources.

(d) "Development lease" means an auction lease or a direct lease that allows nonmetallic minerals exploration, mining, or production on the surface of the leased land in compliance with the department's standard nonmetallic minerals lease terms.

(e) "Direct lease" means a lease issued as the result of individual negotiations with the department that grants the lessee the exclusive right to pursue exploration, mining, or production of the leased nonmetallic mineral rights.

(f) "Director" means the director of the Michigan department of natural resources or the director's designee.

(g) "Hold action list" means a list generated by the department containing persons and entities not in compliance with lease terms or lease rules.

(h) "Land" means any property in which the state owns any nonmetallic mineral rights.

(i) "Development with restrictions lease" means an auction lease or a direct lease that allows nonmetallic minerals exploration, mining, or production on the surface of the leased land in compliance with the department's standard nonmetallic minerals lease terms and subject to special lease restrictions.

(j) "Lessee" means the person or entity that is responsible for all covenants, express or implied, in the lease regardless of any partial interest assignments.

July 16, 2018

(k) "Nondevelopment lease" means an auction lease or a direct lease that does not allow nonmetallic minerals exploration, mining, or production on the surface of the leased land without separate authorization from the department.

(l) "Nonleasable lands" means lands that will not be leased for nonmetallic minerals exploration, mining, or production.

(m) "Nonmetallic minerals" or "nonmetallic mineral products" include any of the following:

- (i) Andalusite.
- (ii) Anhydrite.
- (iii) Asbestos.
- (iv) Barite.
- (v) Celestite.
- (vi) Clay.
- (vii) Coal.
- (viii) Feldspar.
- (ix) Garnet.
- (x) Gem stones, excluding diamonds.
- (xi) Graphite.
- (xii) Gypsum.
- (xiii) Kyanite.
- (xiv) Limestone or dolomite.
- (xv) Marl.
- (xvi) Mica.
- (xvii) Natural salines, including iodine, bromine, calcium, and magnesium compounds.
- (xviii) Potash salts.
- (xix) Salt.
- (xx) Sand and gravel, both construction and industrial.
- (xxi) Sandstone.
- (xxii) Shale.
- (xxiii) Sillimanite.
- (xxiv) Slate.
- (xxv) Miscellaneous stone, both crushed and dimension.
- (xxvi) Sulphur.
- (xxvii) Talc.

(n) "Performance bond" means a surety bond, irrevocable letter of credit, certificate of deposit, or cash to guarantee that the lessee and the lessee's heirs, executors, administrators, successors, and assigns shall faithfully perform the covenants, conditions, and agreements specified in the lease and the laws and rules of this state.

(o) "Qualified party" means an individual of the age of majority or a copartnership, corporation, or other legal entity qualified to do business in this state.

R 299.4022 Lease applications; classifications for leasing; manner of leasing approved lands.

Rule 2. (1) Any party may submit applications identifying state lands requested for nonmetallic minerals leasing. The department may also identify and nominate lands available for nonmetallic minerals leasing.

(2) Applications for state lands requested for leasing shall be in writing on a form designated by the department and shall be submitted to the department at the address listed on the form. An application fee shall accompany the application and shall be in accordance with the fee schedule approved by the department.

(3) The department shall do both of the following:

- (a) Identify all available lands requested for leasing and
- (b) Recommend to the director classifications for leasing as development, nondevelopment, nonleasable, or development with restrictions.

(4) The department may offer lands approved by the director for leasing at public auction, open oral or sealed bid, or may enter direct leases under R 299.4025.

R 299.4023 Notice; list of lands offered for leasing.

Rule 3. (1) For a lease auction, the department shall publish a public notice of the lease auction. The public notice shall be published at least once in a newspaper, as defined in section 1461 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1461, in the county where the lands are situated not less than 30 days before the lease auction; describe the general location of lands to be offered for lease; and provide the date, time, and place of the lease auction. If a newspaper is not published in the county where the lands are situated, the department shall publish the public notice of the lease auction in a newspaper that publishes in a county adjoining the county where the lands are situated. If no newspaper publishes in the adjoining county, the department shall publish the public notice of the lease auction electronically.

(2) For a direct lease request, the applicant shall publish a public notice of the direct lease request. The public notice shall be published at least once in a newspaper, as defined in section 1461 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1461, in the county where the lands are situated not less than 30 days before the decision is made for the direct lease request and describe the general location of lands to be offered for lease. If a newspaper is not published in the county where the lands are situated, the applicant shall publish the public notice of the direct lease request in a newspaper that publishes in a county adjoining the county where the lands are situated. If no newspaper publishes in the adjoining county, the applicant shall publish the public notice of the direct lease request electronically.

(3) Any party may request from the department the form of lease to be used and a list of lands where nonmetallic mineral rights are being offered for leasing at public auction or considered for direct lease. If a lease auction, the list shall include all the following information:

- (a) The date, time, and place of lease auction.
- (b) The conditions of lease auction.

R 299.4024 Offer at public lease auction; procedure.

Rule 4. (1) Nonmetallic mineral lease rights may be offered at public lease auction.

(2) The director shall stipulate the terms and conditions under which the nonmetallic mineral lease rights may be offered for lease auction.

(3) Any qualified party may make a bid on any nonmetallic mineral rights offered for lease unless the bidding party has an outstanding balance owed to the department or is on the hold action list.

(4) For open oral lease auctions, the full amount of the bonus and the first year's rental or the minimum royalty, as applicable, shall be paid to the department on the same day when the lease rights are bid. For sealed bid lease auctions, successful bidders shall pay the full amount of the bonus and the first year's rental or the minimum royalty, as applicable, within 10 business days from the date the department notifies the successful bidder. Bidders who have an established credit rating with the department through prior leasing activity, or units of government, may pay the total amount due by cash, certified check, personal check, or company check. Bidders may also establish a credit rating with the department by filing 3 acceptable credit references with the department, 1 of which shall be from a bank. Bidders who do not have an established credit rating with the department shall pay the entire amount due by cash or certified check.

(5) Failure of the successful bidder to pay the total bonus and the first year's rental or the minimum royalty, as applicable, by the close of open oral lease auctions or within 10 business days from the date the successful bidder is notified by the department for sealed bid lease auctions may result in the forfeiture of the lease rights to the lands involved and may result in the bidder being placed on the hold action list. Placement on the hold action list may bar the bidder from any further leases, assignments, easements, extensions, or other discretionary approvals requested of the department. Lands on which lease rights have been forfeited may be offered to the back-up bidder at the department's sole discretion.

(6) The department may reject any bid or stop the auction of any offered lease rights at any time in the department's sole discretion.

R 299.4025 Direct nonmetallic minerals leases.

Rule 5. The department may enter direct nonmetallic mineral leases.

R 299.4026 Awarding of leases.

Rule 6. (1) Department approval is required before any lease is issued.

(2) The department may group approved lease rights into 1 or more leases, depending on the location of the lease rights and any special lease conditions.

(3) Before a lease shall be executed for any approved lease rights, the successful bidder shall file with the department a performance bond acceptable to the department. The department shall specify the amount of performance bond, maximum acreage covered, and when and how the bond may be drawn upon.

(4) The department shall provide the original lease instrument to the proposed lessee for signature. Unless otherwise agreed to in writing by the department, the proposed lessee shall return the properly executed lease instrument and, for direct leases, the bonus and rental due or the minimum royalty, as applicable, within 30 calendar days from the date the department sent the lease instrument.

(5) If the proposed lessee is unable to return the lease instrument and amount due within the time specified, the department may, upon request of the proposed lessee, authorize additional time if the department determines the delay is not the fault of the proposed lessee. Failure of the proposed lessee to comply within time limits authorized shall result in forfeiture of the entire bonus and first year's rental or the minimum royalty, as applicable. Lands on which lease rights are forfeited may be offered to the back-up bidder at the department's sole discretion.

(6) The department shall return the properly executed lease instrument to the lessee and retain a copy of the lease instrument.

(7) The lessee shall not conduct operations on any leased lands until the lessee receives both of the following:

(a) A fully executed lease.

(b) All necessary separate written permissions required by the department or any other local, state, or federal government agency.

(8) All leases are subject to all federal, state, and local laws.

(9) The department may require any proposed lessee, bidder, or proposed assignee for a nonmetallic minerals lease to submit all the following information to verify that the proposed lessee, bidder, or proposed assignee is qualified to conduct business in this state:

(a) If an individual, proof of attainment of legal age.

(b) If a copartnership, a copy of the "Certificate of Copartnership" or "Certificate of Persons Conducting Business Under Assumed Name" approved by the county clerk in the county where the leased lands are located.

(c) If a corporation or other legal entity, documentation demonstrating the entity's qualifications to conduct business in this state.

(d) If a sole proprietor doing business under an assumed name, copy of the "Certificate of Persons Conducting Business Under Assumed Name" approved by the county clerk in the county where the leased lands are located.

R 299.4027 Lease form; department to determine terms; issuance in name of proposed lessee; responsibility for compliance with terms of lease.

Rule 7. (1) A lease shall be on a form prescribed by the director.

(2) The department shall determine the royalty and rental rates, minimum bonus, primary lease term, and other lease terms.

(3) A lease for nonmetallic mineral rights shall be issued in the name of the proposed lessee designated at the time of the public lease auction or listed on the direct lease application.

(4) The lessee and the department are responsible for compliance with all terms and conditions of the lease.