



highlights

PART I:

SUNSHINE ACT MEETINGS..... 18183

NATURAL GAS EMERGENCY

Presidential proclamation terminating the emergency..... 18053

NATURAL GAS ACT OF 1977

FPC issues emergency order..... 18127

MOTOR CARRIER SAFETY

DOT/FHA proposal on inspection, repair and maintenance requirements of commercial motor vehicles; comments by 7-29-77..... 18103

REHABILITATION SHORT-TERM TRAINING

HEW/OHD announces closing date of 5-6-77 for receipt of applications..... 18131

PRIVACY ACT OF 1974

State Department rules on denial of access; effective 4-1-77 18063

State Department rules on exemptions of systems of records; effective 3-21-77..... 18064

SOURCE PLASMA

HEW/FDA publishes notice that only manufacturers licensed by 5-11-77 may ship in interstate commerce.... 18129

ENDANGERED SPECIES LIST

Interior/FWS determines Golden Coqui and Pine Barrens tree frog to be threatened and proposes critical habitat (2 documents); comments by 6-3 and 6-6-77.... 18106, 18109

INDIAN OIL AND GAS OPERATIONS

Interior/GS procedures for reporting and accounting for royalties 18135

RADIOLOGICAL HEALTH

HEW/FDA rules on submission of data and labels; effective 5-5-77..... 18061

ANTIBIOTIC DRUGS

HEW/FDA amends pH limit for sterile neomycin sulfate-polymyxin B sulfate solution and cefazolin sodium regulations (2 documents); effective 5-5-77..... 18058, 18059

CONTINUED INSIDE

proposed rules

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 Parts 171, 177, 182, and 183]

MINING ON INDIAN LANDS

Mineral Development Contracts

MARCH 30, 1977.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commission of Indian Affairs by 230 DM 2.

Notice is hereby given that it is proposed to revise Parts 171, 177, and 183, to revoke Parts 172 and 173, and to issue a new Part 182, Subchapter P-Q, Chapter 1, of Title 25 of the Code of Federal Regulations. This rulemaking is proposed pursuant to the authority contained in section 4 of the Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), section 1 of the Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), the Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380), sections 16 and 17 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477), section 2103 of Revised Statutes (25 U.S.C. 81), section 3 of the Act of February 28, 1891 (26 Stat. 795, 25 U.S.C. 397), the Act of May 29, 1924 (43 Stat. 244, 25 U.S.C. 398), the Act of March 3, 1927 (44 Stat. 1347, 25 U.S.C. 398a-e), Section 26 of the Act of June 30, 1919, as amended (41 Stat. 31, 25 U.S.C. 399), and section 3 of the Act of June 28, 1906, as amended (34 Stat. 543).

The purpose of this revision is to update and clarify current regulations governing mining on Indian lands in acknowledgement of the increasing desire of Indian mineral owners, both tribal and individual, to exercise greater responsibility in the development and management of their minerals and other natural resources. That desire is reflected in recent attempts to maximize the economic return on Indian mineral development, to achieve greater Indian self determination, and also to minimize the adverse effects of such development on Indian culture and the surrounding environment.

The initial impetus for the revision of the current regulatory scheme was provided by then Secretary Morton in his June 1974 decision on the petition of the Northern Cheyenne Tribe to rescind certain leases and permits for coal mining on tribal lands. He concluded his decision with a directive to the Interior Department Solicitor to rewrite Parts 171 and 177 of 25 CFR "to correct their present ambiguities" and in order "to better fulfill my future trust responsibility to assure the protection of Indian culture and environmental interests as well as to

allow maximum development of Indian natural resources."

A preliminary draft revision of those regulations was then submitted by the Solicitor for Departmental comment in September 1974. There was also some circulation of that draft outside the Department for the commentary of interested parties. In December of that year representatives of the Solicitor's Office met in Denver with field realty officials of the Bureau of Indian Affairs to discuss the draft.

Meanwhile, employees of the Bureau began working independently to revise current regulations governing oil and gas development on Indian lands. It was decided that that subject should receive separate treatment in the regulations.

During much of 1975, however, work on the revisions was postponed while Congress was considering legislation to impose strict controls on coal surface mining, because it was expected that such legislation, if enacted, would have a significant effect on Indian lands. Later that year, after the Congress had failed to override a Presidential veto of the proposed legislation, the task of revision was undertaken once again by the Solicitor's Office in cooperation with the Bureau.

At this same time, the Department was nearing completion of the important task of promulgation of final regulations governing coal mining on federal lands. Those regulations contain environmental protections in the form of stringent operating and reclamation standards. Throughout the drafting period (they were first published as interim regulations on April 30, 1973), it was contemplated that those regulations would apply to both federal and Indian lands. On April 19, 1976, however, Secretary Kleppe announced that Indian-owned coal should be excluded altogether from their purview. That decision was based upon the conclusion that considerations governing the administration of Indian-owned resources are different from those involved in administering the public estate, and that certain provisions contained in the new regulations could not be married to the Department's legal relationship with Indian tribes. In announcing this decision, the Secretary directed the Commissioner of Indian Affairs to revise the regulations governing mining of Indian-owned coal in a manner that would adequately reflect both the Department's legal role as trustee of the natural resources of Indian tribes and also the national policy of Indian self-determination in the administration of those resources, while also providing needed measures to protect the environment and ensure

reclamation of lands disturbed by surface mining of coal. That task was then coordinated with the more general revision project.

Shortly thereafter the Commissioner appointed task forces of BIA realty officials to review and revise regulations in 25 CFR governing Indian land management. Among those task forces were two assigned to review the latest drafts of the mineral regulations and the oil and gas regulations, respectively. Those task forces have since met with representatives of the Solicitor's Office and BIA Central Office to submit their comments on those drafts.

In addition, various preliminary drafts have received some circulation among Indian tribes, tribal attorneys, and Indian organizations. Representatives of the Solicitor's Office and the Bureau also accepted invitations to attend several meetings of the Native American Natural Resource Development Federation during the past year to discuss the proposed revisions and to solicit comments on them.

The proposed regulations published here are the result of these joint efforts. Proposed Part 171 covers that area of rulemaking now found in 25 CFR Parts 171, 172, and 173, except that oil and gas development is the subject of proposed Part 182. Proposed Part 177, and to a lesser extent, Part 183, are substantial revisions of the current regulations in those Parts.

While the current Part 171 can be read as presupposing almost exclusive use of a competitive bid/lease procedure administered by the Bureau of Indian Affairs, the proposed revision recognizes the authority of Indian mineral owners to negotiate with the mineral industry to develop their natural resources, and to enter into any lawful contractual arrangement which will further that goal—subject, of course, to the statutorily required approval of the Secretary of the Interior. Nevertheless, under this proposal mineral leases may still be advertised by a BIA official when the Indian mineral owner requests him to do so.

Proposed Part 171 is also intended to facilitate a management role on the part of Indian mineral owners during the period of the mineral development contract, where the contract so provides.

And the increased participation of Indian tribes in decision-making would be encouraged under the proposal whenever tribally-owned minerals are to be developed.

Though there are necessarily some differences between the development of individually-owned and tribally-owned Indian minerals, it was thought that the same basic principles should apply. Thus,

the substance of current Part 172 is incorporated in proposed Part 171. It is anticipated, however, that Bureau officials will continue to play a major role in the award and supervision of leases of individually-owned Indian minerals in cases of fragmented ownership resulting from problems of heirship.

Current Part 173 is proposed to be revoked in acknowledgement of the fact that the Crow Tribe is now effectively subject to the same statutory authorities affecting Indian mineral development as are most other tribes, as a result of the Act of May 17, 1968 (82 Stat. 123).

Proposed Part 117 has been drafted to clarify the roles of Bureau and other Departmental officials in safeguarding of other Indian natural resources during mineral development. The technical examination required by current § 177.4 would be replaced by the requirement of a written environmental and cultural assessment. The assessment, as proposed, would require specific consideration of a number of environmental, cultural, and social factors prior to the approval of a mineral contract. It would serve to assist the Area Director and the Indian mineral owner in the decision whether to proceed with mineral development, and would also facilitate compliance with the requirements of the National Environmental Policy Act of 1969, which was enacted shortly after promulgation of the current Part 177.

Subpart B of proposed Part 177 contains reclamation and performance standards nearly identical to the standards found in the new coal regulations for public lands. 30 CFR 211.40, 211.41 (41 FR 20268, May 17, 1976). Those regulations were the subject of an environmental impact statement published in March of this year. While the proposed Indian coal standards are little different from those applicable to public lands, their application is coordinated with the other portions of the proposal so that they will be more in line with procedures and considerations which apply only to Indian lands.

Section 177.6(c) of the proposal is reserved for future promulgation of reclamation and performance standards applicable to minerals other than coal. Comprehensive standards for such mineral development do not now exist in the regulations governing either Indian lands or federal public lands.

Proposed Part 182 is similar to proposed Part 171 in its anticipation of greater Indian involvement in the development of oil and gas reserves. However, existing statutory requirements impose more limitations on the methods by which oil and gas development can proceed on most reservations. Certain so-called "organized" tribes may utilize virtually any method they choose while most other tribes must utilize a competitive bid procedure. It is not necessary, however, to conduct these bids on a set royalty basis with the award going to the bidder who offers the largest bonus. Bidders may be allowed to compete on such terms as rental, royalties on other returns to be paid on the oil

and gas produced. The proposed Part 182 provides that the advertisement shall specify any terms requested by the Indian mineral owner. The proposed regulations are also intended to allow interested parties the necessary flexibility to capitalize their ventures. Accordingly, overriding royalties and assignments, including assignments of separate horizons, are expressly permitted under certain conditions that are designed to reflect the Department's continuing trust responsibility to the Indian mineral owners.

The proposed revisions to Part 183 reflect the desire of the Osage Tribe of Oklahoma to take a greater role in the management of its mineral estate. Accordingly, it is proposed that the primary terms of oil and gas leases to be issued on the Osage Reservation shall be set by the Osage Tribal Council and stated in the notice of sale. Section 183.9 is clarified, and proposes to raise the annual rental on combination oil and gas leases from \$1.50 to \$2.00 per acre. It is also proposed to change the prescribed royalty of 16½ percent and to set that figure, based on market value, as a floor for royalties to be paid on all oil and gas produced on the Osage Reservation.

Because these proposed regulations are procedural in nature, with the exception of the standards dealing specifically with coal operations in Subpart B of Part 177, it has been determined that, as a matter of law, no environmental impact statement pursuant to section 102(2)(c) of the Natural Environmental Policy Act of 1969 is required. The subject matter of proposed Subpart B of Part 177 was covered by a final environmental statement published in April, 1976.

The Department of the Interior has determined that this proposed rulemaking does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

It is the policy of the Department of the Interior, whenever practicable to afford the public an opportunity to participate in the rulemaking process. Accordingly, all interested persons are invited to submit written comments, suggestions, or objections with respect to these proposed regulations to the Commissioner of Indian Affairs. Comments from Indian tribes and regional and national Indian organizations will be particularly welcomed. BIA Area Directors are encouraged to consult with the tribes in their respective jurisdictions with regard to this proposed rulemaking.

Special attention to and comment on the following issue is invited: to what extent should these regulations, when made final, apply to existing permits and leases.

All written comments received by June 6, 1977 will be considered. Comments should be sent to the Commissioner of Indian Affairs—Code 202, Bureau of Indian Affairs, Washington, D.C. 20245. However, consideration of and response to comments on the proposed revision of Part 183 will be expedited if

they are sent directly to Superintendent, Osage Indian Agency, Pawhuska, Oklahoma 74056.

It is anticipated that public meetings will be held in six Areas (Aberdeen, Billings, Albuquerque, Phoenix, Window Rock, and Muskogee-Anadarko) to receive public comments on the proposed regulations. The dates, times, and places of these meetings will be announced in the FEDERAL REGISTER.

RAYMOND V. BUTLER,
Acting Commissioner of
Indian Affairs.

1. Part 171 is revised as follows:

PART 171—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN MINERAL LANDS

Sec.	
171.1	Purpose and scope.
171.2	Definitions.
171.3	Authority to contract.
171.4	Procedures for awarding contracts and types of contracts authorized.
171.5	Approval of contracts.
171.6	Economic considerations.
171.7	Performance bonds.
171.8	Approval of amendments to contracts.
171.9	Responsibilities.
171.10	Recordkeeping and inspection.
171.11	Assignments; overriding royalties.
171.12	Enforcement of orders.

AUTHORITY: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477), sec. 2103, Revised Statutes (25 U.S.C. 81), sec. 3, Act of February 28, 1891 (26 Stat. 795, 25 U.S.C. 397), Act of May 29, 1924 (43 Stat. 244, 25 U.S.C. 398), Act of March 3, 1927 (44 Stat. 1347, 25 U.S.C. 398a-e); sec. 26, Act of June 30, 1919, as amended (41 Stat. 31, 25 U.S.C. 399); sec. 3, Act of June 28, 1906, as amended (34 Stat. 543)

§ 171.1 Purpose and scope.

(a) The regulations in this part govern contracts for the prospecting for and mining of Indian-owned minerals, other than oil and gas. These regulations are intended to ensure that Indians desiring to have their mineral reserves developed receive, at least, fair market value for their ownership rights; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to allow Indian mineral owners to enter into contracts which reserve to them the responsibility for overseeing the management and/or development of their mineral reserves.

(b) The regulations in this part do not apply to leasing and mining governed by the regulations in 25 CFR Parts 174, 175, and 176. The regulations in 25 CFR Parts 172 and 173 are hereby revoked.

(c) The regulations in this Part apply only to contracts subject to the approval of the Secretary of the Interior which have not already been approved on the date on which these regulations become effective. All contracts which were approved prior to the effective date of these regulations shall be governed by the

regulations applicable to them on the date of approval. However, existing contracts which are modified by agreements entered into after the effective date of these regulations, shall be subject to § 171.8 of this part.

§ 171.2 Definitions.

As used in the regulations in this Part:

(a) "Area Director" means the Bureau Area Director or his authorized representative having immediate jurisdiction over the minerals covered by a contract under this part.

(b) "Bureau" means the Bureau of Indian Affairs.

(c) "Contract" means any written contract or legally-binding agreement, and is not limited in its meaning to leases, permits, or licenses.

(d) "Gas" means any fluid, either combustible or noncombustible, which is produced from a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(e) "Indian mineral owner" means—

(1) A federally recognized Indian tribe, band, nation, community, group, colony, or pueblo, or agency or subdivision thereof; or

(2) An individual Indian; who owns trust or restricted minerals or mineral rights or is entitled to the proceeds or benefits of the mining or development of minerals, title to which is held by the United States.

(f) "Indian-owned minerals" means—

(1) Minerals, title to which is held by the United States in trust for the benefit of an Indian mineral owner;

(2) Minerals in which an interest is held by an Indian mineral owner subject to federal restrictions against alienation or encumbrance; or

(3) Minerals the proceeds from the mining or development of which are required by federal law to be used for the benefit of Indians.

(g) "Individual Indian mineral owner" means an Indian mineral owner as defined in paragraph (e) (2) of this section.

(h) "Minerals" includes both metaliferous and nonmetaliferous minerals, except oil and gas, and also includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, and silt.

(i) "Mining" means the science, technique and business of mineral development, including opencast and underground work directed to severance and treatment of minerals. However, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay, or silt is the subject mineral, an enterprise is mining only if the sale and removal of such mineral exceeds 250 cubic yards.

(j) "Mining Supervisor" means the Area Mining Supervisor, United States Geological Survey, having responsibility for the area in which the property covered by a contract under this Part is located.

(k) "Oil" means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered

from gas, without resort to manufacturing process.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a contract to mine for Indian-owned minerals.

(m) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a contract to prospect or explore for Indian-owned minerals.

(n) "Secretary" means the Secretary of the Interior or his authorized representative.

(o) "Tribal mineral owner" means an Indian mineral owner as defined in paragraph (e) (1) of this section.

§ 171.3 Authority to contract.

(a) Contracts authorizing prospecting for or mining of Indian-owned minerals may be entered into by a tribal mineral owner through its governing body, by an individual Indian mineral owner, or by a group of Indian mineral owners acting jointly through an association or entity in which they all participate. Such contracts, as well as amendments thereto, shall be subject to the approval authority described in § 171.5 of this part, and shall not be valid until such approval has been secured. Indian mineral owners are encouraged to consult with the Area Director during the negotiation of a mineral contract.

(b) An Indian mineral owner may at any time seek technical or other advice or assistance regarding development of Indian-owned minerals from the Area Director, Mining Supervisor, or the representatives of other appropriate federal monitoring agencies such as the Bureau of Mines, who shall provide such advice or assistance upon request, consistent with his authority.

(c) The Secretary may enter into contracts authorizing prospecting for or mining of Indian-owned minerals on behalf of an individual Indian mineral owner only under the following circumstances:

(1) Where the individual Indian mineral owner of record is deceased and the heirs to or devisees of any interest in the minerals have not been determined, and the Area Director has complied with Bureau regulations regarding the timeliness of the probate of the estate;

(2) Where there are multiple individual Indian mineral owners in an undivided tract which is sought for mining or prospecting, and (i) one or more owners desires to enter into a contract pursuant to this Part but the remainder of the owners cannot be located, or (ii) none of the owners can be located; or

(3) Where the individual Indian mineral owner or a majority ownership interest in an Indian mineral tract is incapacitated by reason of minority;

Provided, that the procedures in § 171.4 (c) of this part must be followed.

(d) The Secretary may not otherwise award any contracts affecting rights in Indian-owned minerals unless he has been requested to do so by the Indian mineral owner.

§ 171.4 Procedures for awarding contracts and types of contracts authorized.

(a) An Indian mineral owner may utilize the following procedures, among others, in entering into a mining or prospecting contract. A contract may be entered into through competitive bidding, negotiation, or a combination of both, and may relate to prospecting, mining, or both. The Indian mineral owner may also request the Secretary to undertake the preparation, advertisement, negotiation, and/or award of such a contract on his behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedure hereinafter described in this section. If application is made to the Secretary by a potential prospector or operator for a contract to prospect and/or mine Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to him, and that he may decline to permit any prospecting for or mining of his minerals.

(b) All prospecting or mining contracts entered into by Indian mineral owners shall be in writing and approved by the Secretary in accordance with § 171.5 of this part. Except as otherwise provided in these regulations or by applicable law, there shall be no restrictions on the terms of such contracts, provided however that no interest in land or minerals may be granted in perpetuity and the Indian mineral owner shall be guaranteed a fair share of the minerals extracted or produced or of the revenue derived therefrom. Individual contracts shall be written to express the will of the parties considering local conditions and circumstances.

(c) Where the Secretary exercises his authority to enter into contracts on behalf of individual Indian mineral owners pursuant to § 171.3(c) of this part, or where he has been requested by the Indian mineral owner under paragraph (a) of this section to assume the responsibility of awarding the contract, he shall offer contracts to the highest responsible qualified bidder subject to the following procedures, unless he determines in accordance with paragraph (d) of this section that the highest return can be obtained on the minerals by other methods of contracting (such as negotiation):

(1) Contracts shall be offered for a bonus consideration under sealed bids or public auction at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition;

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the

contract bid by or on behalf of the Indian mineral owner is required;

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount of not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful;

(4) If no bid is received which meets the criteria of § 171.5 or if the accepted bidder fails to complete the contract, or if the Indian mineral owner refuses the highest bid, the Secretary may readvertise the contract, or if deemed advisable, and in accordance with paragraph (d) of this section, he may attempt to award the contract by private negotiations, provided that the Secretary shall not award a contract by private negotiations without the written concurrence of the Indian mineral owner unless he is exercising his authority under § 171.3(c) of this part;

(5) A successful bidder must remit within 30 days after notification of the bid award the balance of the bonus, the first year's rental, a \$25 filing fee, his share of the advertising costs, and all required bonds, with the Area Director. The successful bidder shall also file the contract in completed form at that time. However, for good and explicit reasons the Secretary may grant an extension of time for filing of the contract. Failure on the part of the bidder to comply with the foregoing will result in forfeiture of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner, in addition to pursuit of any and all other available remedies.

(d) If methods of contracting other than the competitive bid procedure are used, the Area Director shall prepare written findings stating the reasons why it was determined that the method used was more satisfactory than other methods, after consultation with the Mining Supervisor.

(e) Where the Indian mineral owner has requested the Secretary to offer a contract to the highest responsible bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the contract to the successful bidder until the consent of the Indian mineral owner has been obtained.

(f) No mining contract with an Indian mineral owner shall exceed a term of ten years and as long thereafter as minerals are produced in paying quantities, except where a longer period is permitted or a shorter period required by federal law. For the purpose of this provision, the term of a mining contract entered into by means of the exercise of an option shall be measured from the date of the exercise of the option.

(g) Where a mining contract specifies a term of years and "as long thereafter as minerals are produced in paying quantities" or similar phrase, the term "paying quantities" shall mean:

(1) That quantity of recovered minerals which produces, during the fiscal year of the contract, an after-tax profit

to the operator, over and above the total cost of; Extraction, processing, including beneficiation, and handling to the point of sale; all rents and royalties paid under the contract; all salaries and employee expenses incident to such extraction, processing and handling; all taxes incident thereto; all depreciation on salvageable production equipment; all administrative expenses attributable to operation of the subject mine; and any other expenses so attributable, such as business licenses, repairs of equipment, and transportation; and also

(2) That quantity of minerals which produces sufficient income so that a reasonably prudent operator would continue to operate the mine in a diligent manner for the purpose of making a profit from the subject mine and not merely for speculation.

(h) In order to continue production in paying quantities, the operator must not suspend mining operations at any time for a period of 30 days or more without the prior express written approval of the Secretary unless production is impossible as a result of an Act of God or some other cause clearly beyond the operator's power to control. At the expiration of the principal term of the mining contract and at the end of each fiscal year thereafter until expiration of the contract, the operator shall present sufficiently detailed written evidence to the Indian mineral owner and to the Secretary to demonstrate under both standards above that minerals are being produced in paying quantities.

§ 171.5 Approval of contracts.

A prospecting contract or a mining contract shall be approved by the Secretary if he determines that the following conditions are met:

(1) The contract provides a fair and reasonable remuneration to the Indian mineral owner;

(2) The contract does not have adverse cultural or environmental consequences sufficient to outweigh its benefits to the Indian mineral owner;

(3) The contract complies with the requirements of this part, Part 177 of this title, all other applicable regulations, the provisions of applicable federal law, and applicable tribal law where not inconsistent with Federal law.

Such determinations must also be made prior to the award of any contract pursuant to § 171.4(c) of this part.

§ 171.6 Economic considerations.

(a) To aid in the Secretary's consideration of the criteria in § 171.5 of this part, the Area Director shall prepare a written economic assessment of the contract with the assistance of the Mining Supervisor. Such assessment shall include the following findings to the extent of their applicability to mining or prospecting;

(1) Assurances in mining contracts that the minerals will be mined with appropriate diligence;

(2) The availability of water in the amount needed for purposes of operations under the contract;

(3) The adequacy of production royalties or other form of return on the minerals, considering the history and the economics of the mineral industry involved;

(4) The adequacy of payment and enforcement provisions in the contract;

(5) Provisions for the training and preferential employment of the local Indian labor force;

(6) The size and shape of the area to be mined (the mineral tract shall be contained in a reasonably compact body); and

(7) The reputation of the prospector or operator for responsible and diligent development of mineral resources. Contracts shall not be entered into for purposes of speculation.

Information required to be included in such an assessment may be incorporated therein by reference to attached documentation. Such an assessment shall be regarded as an intra-agency memorandum, but shall be made available to the Indian mineral owner in all cases.

(b) In all cases where the mineral estate has been severed from the surface estate, the Area Director shall advise the Indian mineral owner in writing of the possible legal and economic consequences of such severance. At his discretion, the Secretary may postpone approval of a contract until problems of severed ownership have been resolved. Prior to approval the Area Director shall insure that attempts have been made to provide all users and owners of the surface estate with the best practicable notice of the impending operation.

(c) A prospecting contract which also confers mining rights or includes an option on such rights may be approved in two steps: approval may first be given to those parts of the contract relating to prospecting, with the mining aspects of the contract being held in abeyance for subsequent approval at such time as the option is exercised. A prospecting contract granting an exclusive option to mine for potentially substantial or valuable mineral reserves shall be subject to special scrutiny prior to exercise of the approval power. If it appears that the Indian mineral owner will be able to obtain a measurably more favorable return on his minerals by means of a contract or contracts not containing provisions for such an exclusive option, then a prospecting contract granting such an exclusive option shall not be approved; or in the alternative, approval of the mining aspects of such contract shall be withheld pending exercise of the option and submission of a mining plan, as provided above. No prospecting permit containing an exclusive option to mine shall prescribe an inflexible royalty rate or fixed return on production to be paid to the Indian mineral owner.

(d) In aid of his consideration of whether approval should be given to a contract, the Secretary may request that any party thereto submit additional information regarding his financial structure or experience in mining or any other relevant matter. Failure to supply such information may be regarded as a ground for declining to grant approval.

§ 171.7 Performance bonds.

The prospector or operator shall furnish a bond to secure performance on each contract in accordance with § 177.8 of Part 177 of this title.

§ 171.8 Approval of amendments to contracts.

(a) Amendments to or modification of contracts approved pursuant to § 171.5 of this part shall be approved by the Secretary if the entire contract after amendment or modification meets the conditions of that section. The Secretary shall review assessments compiled pursuant to paragraph (a) of § 171.6 of this part and § 177.4 of Part 177 of this title in light of the amendment or modification, and shall revise such assessments, where appropriate.

(b) An amendment to or modification of a contract for the prospecting for or mining of Indian-owned minerals, which contract was approved by the Secretary prior to the effective date of these regulations, shall be approved by the Secretary if, to the extent of the application of the amendment or modification, it meets the conditions of § 171.5. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 171.6. Whenever an amendment or modification to a contract increases the acreage covered by the contract, a written economic assessment of the amendment or modification shall be required.

§ 171.9 Responsibilities.

(a) The Mining Supervisor shall be responsible for advising the Secretary, the Area Director, and Indian mineral owners regarding development and conservation of Indian mineral resources. He is responsible for all geologic, engineering, and economic value determinations incident to contracts for the development of Indian-owned minerals.

(b) In addition to the other responsibilities under this part and part 177 of this title, the Area Director is responsible for promptly transmitting to a tribal mineral owner, and upon request, to an individual Indian mineral owner, all information found and determinations made by the Mining Supervisor regarding the subject minerals or contracts for the development thereof.

(c) In addition to their other responsibilities under this part and Part 177 of this title, the Area Director and Mining Supervisor shall be responsible for consulting with a tribal mineral owner, and upon request, with an individual Indian mineral owner before acting on the approval of a contract or any amendment or modification thereto, a complete or partial mining plan or any amendment or modification thereto, a variance from applicable reclamation or performance standards, the release of any portion of any bond, or before taking any other action which substantially affects the rights of such Indian mineral owner.

(d) Where an approved contract provides for authority on the part of the

Indian mineral owner for overseeing the management and/or the development of mineral reserves and/or other natural resources, the Mining Supervisor and Area Director shall take all steps necessary to insure that the Indian mineral owner is involved in such management and/or development in accordance with the terms of the contract.

§ 171.10 Recordkeeping and inspection.

(a) The prospector or operator shall maintain records of all prospecting and mining operations done under contract, including information on the type, grade, or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All records maintained under subsection (a), all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under contract shall be available for examination, upon request, by the Secretary or the Indian mineral owner until all obligations under the contract have been fulfilled. Such records shall at all times be available for purpose of audit upon the request of the Secretary. When an independent audit is requested by the Secretary the cost thereof shall be borne by the operator.

(c) The Indian mineral owner, the Area Director, and the Mining Supervisor shall at any reasonable time have the right to enter upon all parts of the premises of the operations under the contract for the purpose of inspection.

§ 171.11 Assignments; overriding royalties.

(a) No assignment or sublease of any interest in a contract under this part shall be effective without the approval of the Secretary pursuant to and subject to the criteria of § 171.5. Such approval shall not relieve the assignor of his obligations under the original contract. However, the Secretary, with the consent of the Indian mineral owner, may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such agreement shall not be construed as modifying any of the obligations of the prospector or operator under his contract and the regulations in this part and Part 177 of this title, including the requirement of Department approval prior to abandonment.

§ 171.12 Enforcement of orders.

(a) If the Secretary determines that a prospector or operator subject to the regulations in this part has failed to comply with the regulations in this part, other applicable laws or regulations, the

requirements of an approved exploration or mining plan, or the orders of the Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospector or operator by delivery in person or mailed to him at his last known address. Copies of said notice shall be sent to all interested parties. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary or to initiate an appeal pursuant to either Part 2 of this title or Part 290 of Title 30 of the Code of Federal Regulations shall be grounds for suspension of operations subject to such notice by the Secretary or his recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, laws, terms of the mining plan or contract, or the orders of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Secretary when such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a prospector or operator is conducting activities on lands subject to the provisions of this part which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, or the orders of the Mining Supervisor, and which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in either Part 2 of this Title or Part 290 of Title 30 of the Code of Federal Regulations, whichever is applicable. Compliance with such order shall not be suspended by reason of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian mineral owner or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

(d) The Mining Supervisor shall investigate all claims of the Indian mineral owner regarding a prospector's or operator's failure to comply with the provisions of this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved explor-

ation or mining plan, or the orders of the Mining Supervisor. The Mining Supervisor shall consult with the Area Director and Indian mineral owner, where possible, prior to taking any action pursuant to this section.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the contract of otherwise available at law.

2. Part 177 is revised as follows:

PART 177—PLANS FOR PROSPECTING AND MINING ON INDIAN MINERAL LANDS: RECLAMATION OF NONMINERAL RESOURCES

Subpart A—General Provisions

Sec.	
177.1	Purpose.
177.2	Scope.
177.3	Definitions.
177.4	Environmental and cultural assessment.
177.5	Approval of exploration and mining plans.
177.6	Reclamation and performance standards.
177.7	Responsibilities.
177.8	Performance bond.
177.9	Reports.
177.10	Enforcement; appeals.
177.11	Waiver.

Subpart B—Coal Operations

177.21	Operating and reclamation standards.
177.22	Completion of operations and abandonment.

AUTHORITY: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477), sec. 2103, Revised Statutes (25 U.S.C. 81), sec. 3, Act of February 28, 1891 (26 Stat. 795, 25 U.S.C. 397), Act of May 29, 1924 (43 Stat. 244, 25 U.S.C. 398), Act of March 3, 1927 (44 Stat. 1347, 25 U.S.C. 398-e); sec. 26, Act of June 30, 1919, as amended (41 Stat. 31, 25 U.S.C. 399); sec. 3, Act of June 28, 1906, as amended (34 Stat. 543)

Subpart A—General Provisions

§ 177.1 Purpose.

It is the policy of this Department to encourage the development of Indian-owned minerals when the Indian mineral owner desires such development. However, the federal government's trust responsibilities to Indian tribes and their members require that adequate measures be taken to avoid, minimize, or correct damage to the environment—land, water, and air—as a result of such development, and to avoid, minimize, or correct hazards to the public health and safety. The regulations in this Part prescribe procedures to that end.

§ 177.2 Scope.

(a) Except as provided in paragraphs (b) and (c) of this section, the regulations and this part are applicable to contracts governing operations for the discovery, development, mining, and onsite processing of Indian-owned minerals.

(b) The regulations in this part do not apply to the exploration for or development of oil or gas.

(c) Contracts approved by the Secretary prior to the effective date of this part shall not be subject to the requirements of this part, except that:

(i) The reclamation standards and requirements of this part shall apply to approved contracts for the surfacemining of minerals 180 days after the effective date of this part with respect to those lands from which the overburden has not been removed; and

(ii) The requirements of approved exploration and/or mining plans under this part shall apply to new or modified plans with respect to an existing operation, which plans are submitted for approval more than 18 months after the effective date of this part.

§ 177.3 Definitions.

The definitions in § 171.2 of Part 171 of this title are applicable to the regulations in this part. In addition, as used in the regulations in this part:

(a) "Affected area" or "area to be affected" means any lands affected or to be affected by exploration, development, mining operations, or the construction of any facilities necessary or related to such operations.

(b) "Casual use" means activities which do not cause significant surface disturbance or damage to lands, resources, or improvements, such as activities which do not include heavy equipment, explosives, or heavy vehicular movement off established roads or trails which causes such disturbance.

(c) "Coal" includes coal of all ranks from lignite to anthracite.

(d) "Operation" or "operations" means all of the activities related to mineral exploration or development on or within close proximity to the land identified in a prospecting or mining contract as being subject to the terms of the contract.

(e) "Overburden" means the earth and other materials which lie above a natural deposit of minerals, and such earth and other materials after removal from their natural state in the process of mining or prospecting.

(f) "Pollution" means man-made or man-induced adverse alteration of the chemical, physical, biological, or radiological integrity of land, water, or air, which does or has the potential of reducing the beneficial uses of these resources.

(g) "Reclamation" means the processes of land, air, vegetation, and water treatment that restrict and control water quality and flow degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other harmful effects on the environment resulting from exploration, mineral development, mining, on-site mineral preparation, transport, or waste disposal so that the affected area is reclaimed to a stable condition capable of supporting the uses established prior to commencement of such operations, or an equal or better use which has been identified in an approved exploration or mining plan under this part.

(h) "Refuse" means solid or liquid waste material produced by an opera-

tions and any other wastes having no further use on the affected area.

(i) "Revegetation" means the emergence, continued growth, sustained productivity, and achievement of a long-term natural succession of vegetation, as determined by a qualified scientist, suitable to the approved post-disturbance land use for the surface of the affected area, and includes seeding, planting, and measures taken to support stable vegetative growth, such as fertilization, cultivation, mulching, and irrigation where these support measures are necessary to achieve the vegetative cover required by a prospecting or mining contract, an approved exploration or mining plan, and these and other applicable regulations.

(j) "Topsoil" means the unconsolidated soil horizons that exist in the natural state, and that are or can be made suitable for plant growth, and also the unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent materials, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

§ 177.4 Environmental and cultural assessment.

(a) To aid in the Secretary's consideration of the cultural and environmental consequences of a contract, pursuant to § 171.5(2) of Part 171 of this title or other provision governing approval of contracts for the mining of or prospecting for minerals other than oil and gas, and to determine whether preparation of an environmental impact statement is required by section 102(2)(C) of the National Environmental Policy Act of 1969, the Area Director shall prepare a written environmental and cultural assessment of the contract.

(b) Such assessment shall examine the prospective effects of the proposed operation upon the environment and the local Indian culture, and shall specifically consider:

(1) The prevention and control of flooding, erosion, and earth slides;

(2) The effect of the operation on the quality and flow of water and watercourses in the affected area;

(3) The effect on air quality;

(4) The need for reclamation of the affected area by revegetation, replacement of soil, or other means;

(5) Land uses both before and after operations;

(6) The protection of fish and wildlife and their habitat;

(7) Measures designed to guarantee health and safety;

(8) The effect on items of historical, scenic, archeological, and ethnological value;

(9) The impact on the local Indian population, with particular reference to:

(i) The possible dislocation of people from their homes or occupations;

(ii) The influx of non-Indians into the Indian community, and its effect on the local cost of living, tribal government, housing, educational services, police protection, transportation and communication facilities, health care, and intercultural relationships;

(iii) Noise and esthetics; and

(iv) Threats to vegetation, wildlife, and natural or other monuments which play an important role in local Indian culture or religion; and

(10) Any other potentially adverse effects on the environment.

The format for such an assessment is provided in the Environmental Quality Handbook, 30 BIAM Supplement 1. When it is recognized that a complete environmental impact statement is to be prepared prior to approval of the contract, it is sufficient that information required to be included in the assessment appear in the impact statement. The environmental and cultural assessment shall be made available to the Indian mineral owner prior to contract approval, and may be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(c) In the making of any assessment under this section, the Area Director may obtain the assistance of the Mining Supervisor.

§ 177.5 Approval of exploration and mining plans.

(a) Before conducting any operation other than casual use, the prospector or operator shall submit to the Mining Supervisor and Area Director and obtain their approval of, an exploration or mining plan. Such plans shall be consistent with and responsive to the requirements of the underlying contract, and shall demonstrate that reclamation of the affected area, to the extent it is possible, is an integral part of the planned operations and that reclamation will progress in accordance with all applicable performance standards. The details of the reclamation aspects of the plan shall be based upon the advice of technically trained personnel experienced in the type of reclamation to be undertaken. The Mining Supervisor shall be available to consult with the Indian mineral owner before acting to approve or disapprove any such plan.

(b) Where a contract involves both prospecting and mining operations in an affected area, or where a prospecting permit conveys an option to conduct mining operations or a right of first refusal with regard to contracting for such operations, prospecting operations may commence after approval of an exploration plan but prior to submission and approval of a mining plan.

(c) The plan required by paragraph (a) of this section shall include: (1) Accurate and up-to-date maps of the area to be affected by the operation, drawn to a scale acceptable to the Mining Supervisor and showing roads, dwellings, utilities, and fences, and the topographic, cultural and drainage features of the area;

(2) A detailed description of the prospecting, mining, processing, and transporting methods to be used in any given portion of the affected area, including, but not necessarily limited to, descriptions of equipment, locations of vehicular trails, roads, and railroads, drilling, trenching, and blasting requirements, size and location of support facilities, and a designation of those portions of the affected area which will be specifically disturbed or damaged by these methods and a description of the anticipated disturbance or damage to each such portion;

(3) Identification of all known items of archeological, historical, ethnological, or cultural value in the affected area, and a description of the specific measures to be taken to identify and protect any such items during the course of the operation;

(4) A list of the anticipated number of persons to be employed in each occupation at an operation at any given time, and plans for the training and utilization of the local Indian labor force;

(5) A description of the condition and uses of the area to be affected at the time the plan is prepared, and a statement of the capability of the area to support its existing use or any equal or better use, giving consideration to topography, vegetative cover, and soil, foundation and water characteristics;

(6) A projection of the quantity of water to be used during an operation, the source of such water, a description of any pollutants which are expected to enter any receiving waters, and a detailed plan for the control and treatment of all water and water courses (both surface and subsurface) connected with or to be affected by the operation;

(7) Consistent with the proposed land use after cessation of an operation, a planting and revegetation program calculated to restore permanently to the affected area, where possible, the native vegetation; such program shall provide for soil stabilization and preservation prior to such revegetation and shall show proposed methods of preparation and fertilization of the soil and proposed methods of planting;

(8) A description of all measures to be taken to prevent or control fire, soil erosion, air pollution, damage to fish and wildlife (key wildlife habitats in the affected area shall be identified), and hazards to public health and safety both during and upon cessation of the operation;

(9) The names and addresses of supervisory personnel employed by the prospector or operator and responsible for the planned activities under the contract;

(10) A detailed description of the methods to be used to grade, backfill, and contour, if necessary, the affected area; and

(11) An integrated timetable for the planned commencement and completion of prospecting, mining, and reclamation operations.

(d) After the plan is approved, it shall be attached to the contract, and shall be

made a part thereof. The prospector and/or operator and all subcontractors shall conform all their operations to the terms of the plan.

(e) A plan may be reasonably revised or supplemented at any time at the direction of the Mining Supervisor, after consultation with the Area Director and Indian mineral owner, to adjust to changed conditions or to correct oversights. If the prospector or operator seeks to change an approved plan, he shall submit a written statement of the proposed revision and the justification therefor to the Mining Supervisor, the Area Director and the Indian mineral owner.

(f) If development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot be determined except during the progress of the operations, the Mining Supervisor may, after consultation with the Area Director and Indian mineral owner, approve a partial plan and permit commencement of the operation under such partial plan. A partial plan shall include all information required by paragraph (c) of this section and other applicable regulations to the extent that such information is available. Before approval of a partial plan may be secured, the prospector or operator must demonstrate to the Mining Supervisor that the data or information necessary to complete the plan could not be obtained, and provide the Mining Supervisor with adequate assurances that such data or information will be collected with due diligence during the progress of the operation, and that when sufficient data or information has been obtained, a complete plan will be promptly submitted for approval. If it appears to the Mining Supervisor that a prospector or operator has failed to abide by such assurances, he shall inform the Area Director and Indian mineral owner. The Area Director may then order operations suspended in accordance with enforcement procedures provided by applicable regulations or the terms of the contract.

§ 177.6 Reclamation and performance standards.

(a) In addition to the reclamation and performance standards provided for in a prospecting or mining contract, the standards found in Subpart B of this Part shall be applicable to all operations for the prospecting for or mining of coal.

(b) Upon completion or suspension of prospecting operations for minerals other than coal, and as provided in the prospecting contract, a prospector shall submit to the Mining Supervisor, the Area Director, and the Indian mineral owner signed copies of records and geologic interpretations of all prospecting operations conducted on the subject lands, including all calculations of recoverable mineral reserves, maps showing all prospecting activities, and any other data or maps revealing the mineral composition of the subject lands and the accessibility of the minerals. All such information shall be regarded as geological and geophysical information

and data subject to section 552(b) (9) of Title 5 of the U.S. Code.

(c) [Reserved]

NOTE.—The preparation of reclamation and performance standards applicable to mining operations for minerals other than coal is currently being considered within the Department.

(d) Variances from compliance with the reclamation and performance standards in this section and in § 177.21 of Subpart B of this part may be allowed only upon the written application of the operator and the Indian mineral owner to the Secretary. The application shall state with particularity the standards sought to be waived and the proposed alternatives to compliance with such standards, and shall provide appropriate information demonstrating the need for such a variance. In considering such application, the Secretary shall be guided by the criteria of § 171.5 of Part 171 of this title. Before approving an application for variance, the effect of such variance on the surrounding environment shall be indicated in an amendment to the environmental and cultural assessment prepared pursuant to § 177.4 of this part.

§ 177.7 Responsibilities.

(a) The responsibilities stated in § 171.9 of Part 171 of this title are applicable to the provisions in this part.

(b) Nothing in the regulations in this part shall be construed as abridging the rights of Indian mineral owners to enforce the provisions of any such contract, or (in the case of an Indian Tribe exercising governmental authority) to promulgate rules, regulations, or ordinances governing mineral development or reclamation of mineral lands. To the extent that any such tribal law is more stringent than the standards in this Part governing the management and supervision of natural resources, such tribal law shall supersede these regulations.

(c) Where the regulations in this part recognize certain responsibilities on the part of the Indian mineral owner, such responsibilities shall be assumed by the Area Director in situations where the Secretary has assumed the responsibility for contracting pursuant to § 171.3(c) of Part 171 of this title, or other applicable regulation, or where the Indian mineral owner has delegated such responsibilities to the Secretary pursuant to § 171.4(a) of Part 171 of this title.

§ 177.8 Performance bond.

(a) Upon approval of an exploration or mining plan, and before conducting any operation other than casual use, the prospector or operator shall be required to furnish a bond, payable to the Secretary, with surety satisfactory to the Mining Supervisor and the Area Director, conditioned on the faithful performance of the requirements of the prospecting or mining contract, the approved exploration or mining plan, the regulations of this Part, and all other applicable regulations. The bond shall be in an amount sufficient to secure diligent performance of the terms of the contract

and approved plan, and to satisfy the reclamation requirements of these and other applicable regulations. In determining the amount of the bond, consideration shall be given to the character and nature of the reclamation requirements and the estimated costs of reclamation in the event that the prospector or operator forfeits his performance bond.

(b) Liability under the bond shall be for the duration of the prospecting or mining operations and for a period of five years thereafter. The Mining Supervisor and Area Director may, after consultation with the Indian mineral owner, permit complete or partial release of the bond prior to the expiration of five years after the cessation of operations, in accordance with § 177.9 of this part.

(c) The right is specifically reserved to the Secretary to increase the amount of the bond during the term of the contract if changed economic conditions make such an increase necessary to secure performance under the contract or to satisfy the reclamation requirements of all applicable regulations.

§ 177.9 Reports.

(a) Within 30 days after the end of each calendar year, or if operations cease before the end of a calendar year, within 30 days after the cessation of operations, the prospector or operator shall submit a report to the Mining Supervisor and the Area Director containing the following information:

(1) Identification of the contract and the location of the operation;

(2) A description of the operations performed during the period of time for which the report is filed;

(3) Identification of the area of land affected by the operations during the report period and a description of the manner in which the land has been affected;

(4) A statement of the number of acres disturbed by the operations and the number of acres which were reclaimed during the report period;

(5) A description of the methods utilized for reclamation, and data showing the success of such reclamation; and

(6) A statement and description of the reclamation work remaining to be done and a time schedule.

Such report shall be made available to the Indian mineral owner, upon request.

(b) Upon completion of such grading and back-filling as may be required by an approved exploration or mining plan and applicable regulations, the prospector or operator shall make a report thereon to the Mining Supervisor and the Area Director, who shall advise the Indian mineral owner, and request their inspection for approval. Whenever it is determined by such inspection that back-filling and grading have been carried out in accordance with the established requirements and approved exploration or mining plan, the Area Director may issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that

the required revegetation program is carried out.

(c) Upon completion of such revegetation as may be required by an approved exploration or mining plan and applicable regulations, the prospector or operator shall make a report thereon to the Mining Supervisor and the Area Director, who shall advise the Indian mineral owner. Such report shall—

(1) Identify the contract;

(2) Show the type of planting or seeding, including mixtures and amounts, and equipment used;

(3) Show the date(s) of planting or seeding;

(4) Identify or describe the areas of the lands which have been planted or seeded;

(5) Describe any mulching, surface manipulation, fertilization, and irrigation procedures;

(6) Describe the weather conditions (precipitation, temperature, wind) preceding, during, and following vegetation, as these may have affected or affect revegetation;

(7) Describe plant nutrient fertilizers incorporated into the soils of the revegetated lands; and

(8) Contain such other information as may be relevant.

As soon as possible after the completion of the first full growing season, the Mining Supervisor and Area Director shall make an inspection and evaluation of the vegetative cover to determine if a satisfactory growth has been established. If it is determined that a satisfactory vegetative cover has been established in accordance with the approved exploration or mining plan and applicable regulations, and that it is likely to continue to grow, any remaining portion of the performance bond may be released if all other requirements have been met by the prospector or operator.

(d) Not less than 30 days prior to cessation or abandonment of operations, the prospector or operator shall report to the Mining Supervisor and the Area Director, who shall advise the Indian mineral owner, his intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his operations, the extent and kind of reclamation accomplished, a statement and description of the structures and other facilities that remain in the affected area, and any other relevant information. Upon receipt of such a report the Mining Supervisor shall inspect the affected area and consult with the Area Director to determine whether operations have been carried out in accordance with the terms of the contract, the approved exploration or mining plan and applicable regulations.

§ 177.10 Enforcement; appeals.

The provisions of this part may be enforced as provided by § 171.12 of Part 171 of this title. The Mining Supervisor shall promptly notify the Indian mineral owner and Area Director of violations or impending violations of the provisions of this Part so that they may take appropriate action. Appeals from decisions of

the Mining Supervisor under this part may be made pursuant to 30 CFR Part 290.

§ 177.11^F Waiver.

The Indian mineral owner may seek a waiver from any of the provisions of this Part by making a written request to the Area Director, detailing the provisions sought to be waived and the reasons therefore. After consultation with the Indian mineral owner, the Area Director shall forward the request for waiver to the Commissioner of Indian Affairs for appropriate action. The Commissioner may grant such a waiver in accordance with § 1.2 of Part 1 of this title. Waivers may not be made by the inclusion of a waiver provision in a federal government contract form.

Subpart B—Coal Operations

§ 177.21 Operating and reclamation standards.

(a) Performance standards. The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of land subject to this part, including the surface effects of underground mining:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this subpart.

(2) The operator shall replace overburden and waste minerals in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading, or other means, so as to cover all acid-forming or other toxic materials, eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and, where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this subpart. Variance from the requirements of paragraphs (a) (1) and (2) of this section may be allowed in an approved mining plan if the Mining Supervisor, with the concurrence of the Area Director, determines that unusual physical conditions, such as steeply dipping coal beds or multiple seam mining, exist at the site, and such conditions make backfilling pursuant to such requirements impracticable as a

result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other soil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other material.

(5) The operator shall utilize water impoundments, water retention facilities, dams, or settling ponds only pursuant to an approved plan, and shall ensure that:

(i) Such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Such facility is designed, located, built, used and maintained in accordance with sound engineering standards and practices and applicable Federal and tribal laws and regulations to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize, control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control, or prevent disturbances of the prevailing quality, quantity, and flow of water in surface and ground water systems, and of the

prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through, acid or toxic-producing materials; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and walls to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the Area Director, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the Area Director, provided, however, that any siltation structure retaining water shall in any event be subject to the requirements of paragraph (a) (5) of this section.

(iv) Protecting the quality, quantity, and flow, including depth of flow, of both upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of streams, avoiding mining, installing, reestablishing, or replacing aquifers or aquicludes, and replacing soil, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property right to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control, or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape

waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with paragraph (a) (4) of this section, and revegetate in accordance with paragraph (a) (13) of this section. All impoundments of liquid wastes shall comply with the requirements of paragraph (a) (5) of this section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine, provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and tribal laws and an approved plan, and shall:

(i) Provide adequate advance written notice by publication and/or posting of planned blasting schedules, to tribal and other local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts to those least disruptive of normal activities in the vicinity of the blasting.

(11) The operator shall design to applicable standards, construct, maintain, and, when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts, and ditches, into and across the site of operations, in a manner that will minimize, control, or prevent erosion and siltation, pollution of water, damage to fish and wildlife or their habitat and public or private property. The operator shall maintain dust control by watering down or other suitable methods.

(12) (i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted to the Mining Supervisor a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance and exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked, and inspected and ap-

proved by the Mining Supervisor, in consultation with the local tribal government and the Area Director.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal season flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic eco-system, provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Subpart and as set forth in an approved plan.

(13) (i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regraded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plant succession, at least equal in density and permanence to the natural vegetation; provided, however, that the Mining Supervisor, with the concurrence of the Area Director, may allow the use of approved mixtures or introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-noxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the Mining Supervisor and the Area Director determine that successful revegetation in compliance with paragraph (a) (13) (i) of this section has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the Area Director, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics, and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to paragraph (i) of this section is likely to occur before the expiration of such minimum period, he may specify in the contract that such minimum period will not apply with respect to some or all of the lands included in such contract; and

(B) Where during any period the Area Director, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period

initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the Area Director shall jointly inspect and evaluate the revegetated areas as soon as possible after each full growing season to determine whether satisfactory vegetative growth is being established, or whether additional revegetation efforts should be ordered by the Mining Supervisor.

(14) The operator shall regulate public access, vehicular traffic and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the residents and the public wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a contract, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor in an approved plan.

§177.22 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading requirements have been met, the Mining Supervisor shall recommend to the Area Director release of an appropriate amount of the compliance bond for the area satisfactorily back-filled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of un-

authorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations, for exploration, development, or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include casing, or combinations of these or other methods. Reclamation and clean-up of permanently abandoned underground or surface mines and surrounding areas, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operations, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved mining plan and therein approved post-mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to section 177.21 of this Subpart, they must be designed and constructed so as to be permanently stabilized, using adequate drains, water barriers, and other practices.

(d) *Notice of Abandonment; release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the Area Director shall promptly make an inspection to determine whether all operations have been completed in accordance with the terms and conditions of all contracts, and with the requirements of the approved operating plan. Where the operator has complied with all such terms, conditions, and requirements, and the regulations of this part, the Mining Supervisor shall recommend to the Area Director that the appropriate period of liability be terminated.

(3) When the surface of lands in a contract is not owned by the Indian mineral owner and is not held in trust by the United States for the Indian mineral owner, the Mining Supervisor shall notify the surface owner and solicit and take

into account his comments before recommending to the Area Director that the period of such bond liability be terminated.

3. Part 182 is added as follows:

PART 182—OIL AND GAS CONTRACTS

Sec.	
182.1	Scope of regulations.
182.2	Definitions.
182.3	Applicability of U.S. Geological Survey regulations.
182.4	Authority and responsibility of Area Supervisor.
182.5	Appeals.
182.6	General provisions.
182.7	Removal of restrictions.
182.8	Removal of restrictions upon part of acreage.
182.9	Geological and geophysical permits.
182.10	Application for geological and/or geophysical permits, leases, and other development contracts.
182.11	Authority to contract.
182.12	Procedures for awarding contracts and types of contracts authorized.
182.13	Approval of contracts.
182.14	Persons signing in representative capacity; furnishing of corporate and other information.
182.15	Bonds.
182.16	Rentals, minimum royalty, production royalty.
182.17	Manner of payments.
182.18	Inspection of premises, books and accounts.
182.19	Assignments, operating and development agreements, and overriding royalties.
182.20	Restrictions on operations, work-over and shut-in applications.
182.21	Unitization, communization and well spacing.
182.22	Contracts for subsurface storage of oil or gas.
182.23	Termination and cancellation, enforcement of orders.
182.24	Fees.

AUTHORITY: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 390), secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 2103, Revised Statutes (25 U.S.C. 81); sec. 3, Act of February 28, 1891 (26 Stat. 795, 25 U.S.C. 397), Act of May 29, 1924 (43 Stat. 244, 25 U.S.C. 398), Act of March 3, 1927 (44 Stat. 1347, 25 U.S.C. 398a-e); sec. 26, Act of June 30, 1919, as amended (41 Stat. 31, 25 U.S.C. 399); sec. 3, Act of June 28, 1906, as amended (34 Stat. 543).

§182.1 Scope of regulations.

(a) Except as provided in this section, the regulations in this part govern oil and gas development on individually owned and tribal land and other lands under the jurisdiction of the Department of the Interior where the proceeds from oil and/or gas development belong to Indians or are required to be used for the benefit of Indians, except lands leased by the Bureau of Land Management pursuant to the Minerals Leasing Act for Acquired Lands, enacted August 7, 1947 (61 Stat. 918; 30 U.S.C. 351-359). These regulations shall not apply to the Osage Reservation or to lands of Members of the Five Civilized Tribes in Oklahoma.

(b) Where oil and gas mineral rights are acquired for or by Indians and at the time of such acquisition they are under lease pursuant to 43 CFR, those leases shall be administered by the Commissioner of Indian Affairs in accordance with 43 CFR except that appeals shall be governed by 25 CFR, Part 2, and all payments or reports required by such leases shall be made to the official of the Bureau of Indian Affairs having jurisdiction over the land instead of to the Bureau of Land Management as designated in 43 CFR.

(c) All former regulations in Parts 171, 172, 173, and 174 (except as otherwise provided in this part) governing oil and gas exploration and leasing are superseded by the regulations in this Part. Except as otherwise provided in this Part, all contracts which were approved prior to the effective date of these regulations shall be governed by the regulations applicable to them on the date of approval.

(d) The operating and development standards in this Part may be superseded by the provisions of any tribal Constitution, by-laws or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.), the Alaska Act of May 1, 1936 (49 Stat. 1250; 25 U.S.C. 473a); or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501, et seq.), or by ordinance, resolution or other action authorized under such Constitution, by-laws or charter, if the tribal action provides protection at least as stringent as is provided by these regulations. The operating and development standards in this Part, insofar as they are not so superseded, shall apply to contracts made by organized tribes if the validity of the contract depends upon the approval of the Secretary of the Interior.

(e) Valid leases previously approved and renewed pursuant to Part 184 shall continue through the present renewal period according to their terms until expiration. Subsequent renewals shall be subject to the regulations of this part and applicable provisions of 30 CFR, Part 221, including development and production requirements.

§ 182.2 Definitions.

As used in the regulations in this part:

(a) "Area Director" means the Bureau Area Director or his authorized representative having immediate jurisdiction over the oil or gas covered by a contract governed by the regulations of this part.

(b) "Bureau" means the Bureau of Indian Affairs.

(c) "Contract" means any written contract or other legally binding agreement, and is not limited in its meaning to leases, and does not include geological or geophysical permits.

(d) "Gas" means any fluid, either combustible or noncombustible, which is produced from a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(e) "Indian mineral owner" means:

(1) A federally recognized Indian tribe, band, nation, community, group, colony, or Pueblo, or agency or subdivision thereof; or

(2) An individual Indian;

Who owns trust or restricted minerals or mineral rights, or is entitled to the proceeds or benefit of the mining or development of minerals, title to which is held by the United States.

(f) "Individual Indian mineral owner" means an Indian mineral owner as defined in subsection (e) (2) of this section.

(g) "Oil" means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(h) "Operator" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a contract to mine for oil or gas.

(i) "Secretary" means the Secretary of the Interior or his authorized representative.

(j) "Superintendent" means the Bureau Superintendent or his authorized representative having immediate jurisdiction over the minerals covered by a contract under this Part.

(k) "Supervisor" means the Area oil and gas Supervisor, a representative of the Secretary, subject to the direction and supervisory authority of the Director, Geological Survey.

(l) "Tribal mineral owner" means an Indian mineral owner as defined in subsection (e) (1) of this section.

§182.3 Applicability of U.S. Geological Survey regulations.

The regulations of the United States Geological Survey published in 30 CFR, Part 221, as amended, are applicable to geological and geophysical permits, leases, and other contracts governed by this Part when not inconsistent with the express provisions of the permits, leases, or other contracts, or with the regulations of this Part.

§182.4 Authority and responsibility of area supervisor.

The Area Supervisor is authorized and empowered to approve, supervise, and direct operations under oil and gas contracts governed by the regulations of this part; to furnish to the Secretary and the Indian mineral owner scientific and technical information and advice; to ascertain and record the amount and value of production; to determine and record rentals and royalties due and paid. As to oil and gas contracts involving profit-sharing or other than percentage royalty method of payment, the Supervisor shall not be responsible for monitoring, accounting for and collecting the funds resulting from such contractual agreements. However, the Supervisor shall be responsible for reviewing and reporting to the Secretary his recommendations concerning any proposed oil and gas contracts.

§182.5 Appeals.

Appeals from decisions regarding contracts governed by the regulations in this part shall be made in accordance with Part 2 of this title if the decision is made by an official of the Bureau of Indian Affairs. If the decision appealed is rendered by an official of the U.S. Geological Survey, the appeal shall be made in accordance with Part 290 of Title 30 of the Code of Federal Regulations.

§ 182.6 General provisions.

(a) All geological and geophysical permits, leases, or other contracts, and all assignments thereof for the exploration for or development of oil and/or gas, and all bonds shall be in a form approved by the Secretary, and such instruments and ratifications of such instruments shall be subject to his written approval. The forms may be obtained from the officer having jurisdiction over the lands.

(b) All leases or other contracts executed before the removal of restrictions against alienation on land from which all restrictions are removed after execution but before Departmental approval, whether now filed with the Secretary or presented for consideration hereafter, will be considered and acted upon by the Department of the Interior if such leases or contracts contain specific provision for approval by the Secretary.

§ 182.7 Removal of restrictions.

(a) Nothing contained in any oil or gas contract shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of a contract. The owners of the land and the holder of any such contract shall be notified of any change in the status of the land.

(b) Notwithstanding the provisions of any oil or gas contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Department of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the mineral owner(s).

(c) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue subject to the supervision of the Secretary until such time as the holder of the contract and the mineral owner shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the oil and gas upon the restricted land separately from that upon the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the contract, the regulations of this part, and all other applicable laws and regulations.

§ 182.8 Removal of restrictions upon part of acreage.

Should restrictions be removed from only part of the acreage covered by a contract which provides that payments to

the mineral owners shall thereafter be paid to each owner in the proportion which his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this Part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian mineral owner at the time and in the manner specified by the regulations in this Part.

§ 182.9 Geological and geophysical permits.

Geological and geophysical permits may be granted to search for evidence of oil or gas. Prior consent of the tribe must be obtained for geological and/or geophysical permits on tribal land and the consent of a majority of the ownership interest if known on individually owned land. Such permits must describe the area to be explored, definitely state the term and the consideration to be paid. A geological and/or geophysical permit will not give the permittee any preference right to a lease or other development contract nor authorize the production or removal of oil or gas.

§ 182.10 Application for geological and/or geophysical permits, leases and other contracts, and sales of leases or other development contracts.

Applications for geological and/or geophysical permits accompanied by a plan of the work which the applicant intends to perform and requests for tracts to be advertised may be made to the official of the Bureau of Indian Affairs having jurisdiction over the land, or to the Indian mineral owner.

§ 182.11 Authority to contract.

(a) Contracts authorizing exploration or prospecting for, or for development and production of Indian-owned oil and/or gas may be entered into by a tribal mineral owner through its governing body, by an individual Indian mineral owner, or by a group of Indian mineral owners acting jointly or through an association or entity in which they all participate. Such contracts, as well as amendments thereto, shall be subject to the approval authority described in section 182.13 of this Part, and shall not be valid until such approval has been secured. Indian mineral owners are encouraged to consult with the Area Director during the negotiation of an oil or gas contract.

(b) An Indian mineral owner may at any time seek technical or other advice or assistance regarding development of Indian-owned minerals from the Superintendent or Supervisor, who shall provide such advice or assistance upon request consistent with his authority.

(c) The Secretary may enter into contracts authorizing exploration for or

development of Indian-owned oil and/or gas on behalf of individual Indian mineral owners only under the following circumstances:

(1) Where the individual Indian mineral owner of record is deceased and the heirs to or devisees of any interest in the minerals have not been determined, and the Superintendent has complied with Bureau regulations regarding the timeliness of the probate of the estate; or

(2) Where there are multiple individual Indian mineral owners in an undivided tract which is sought for exploration or development, and

(i) One or more owners desires to enter into a contract pursuant to this Part but the remainder of the owners cannot be located, or

(ii) None of the owners can be located; or

(3) Where the individual mineral owner or a majority ownership interest in the mineral tract is incapacitated by reason of minority.

(d) The Secretary may not otherwise award any contracts affecting rights in Indian-owned oil or gas unless he has been requested to do so by the Indian mineral owner.

§ 182.12 Procedures for awarding contracts and types of contracts authorized.

(a) Except in the case of leases by tribal mineral owners who are not organized under sections 16 and 17 of the Act of June 18, 1934 (25 U.S.C. 476, 477), an Indian mineral owner may utilize the following procedures, among others, in entering into a mining or prospecting contract. A contract may be entered into through competitive bidding, negotiation, or a combination of both, and may relate to prospecting, mining or both. The Indian mineral owner may also request the Secretary to undertake the preparation, advertisement, negotiation, and/or award of such contract on his behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures hereinafter described in this section. If application is made to the Secretary by a potential prospector or operator for a contract to prospect and/or mine Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to him, and that he may decline to permit any prospecting for or mining of his minerals.

(b) All prospecting or mining contracts entered into by Indian mineral owners shall be in writing and approved by the Secretary. Except as otherwise provided in these regulations or by applicable law, there shall be no restrictions on the terms of such contracts, provided, however, that no interest in land or minerals may be granted in perpetuity and the Indian mineral owner shall be guaranteed a fair royalty or share of the minerals extracted or produced or of the revenue derived therefrom. Individual contracts shall be written to express the will of the parties con-

sidering local conditions and circumstances.

(c) Where the Secretary exercises his authority to enter into contracts on behalf of individual Indian mineral owners pursuant to § 182.11(c) of this part, or where he has been requested by the Indian mineral owner under paragraph (a) of this section to assume the responsibility of awarding the contract, he shall offer contracts to the highest responsible qualified bidder subject to the following procedures, unless he determines in accordance with paragraph (d) of this section that the highest return can be obtained on the minerals by other methods of contracting (such as negotiation):

(1) Contracts shall be offered for a bonus consideration under sealed bids or public auction at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the contract bid by or on behalf of the Indian mineral owner is required;

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful;

(4) If no bid is received which meets the criteria of § 182.13, or if the accepted bidder fails to complete the contract, or if the Indian mineral owner refuses to accept the highest bid, the Secretary may readvertise the contract, or if deemed advisable, and in accordance with subsection (d) of this section, he may attempt to award a contract by private negotiations, provided that the Secretary shall not award a contract by private negotiations without the written concurrence of the Indian mineral owner unless he is exercising his authority under § 182.11(c) of this part.

(5) A successful bidder must remit within 30 days after notification of the bid award the balance of the bonus, the first year's rental, a \$25 filing fee, and his share of the advertising costs, and all required bonds, with the Superintendent. The successful bidder shall also file the contract in completed form at that time. However, for good and explicit reasons the Secretary may grant an extension of time for filing of the contract. Failure on the part of the bidder to comply with the foregoing will result in forfeiture of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner, in addition to pursuit of any and all other available remedies.

(d) If methods of contracting other than the competitive bid procedure are used, the Superintendent shall prepare written findings stating the reasons why it was more satisfactory than other methods, after consultation with the Mining Supervisor.

(e) Where the Indian mineral owner has requested the Secretary to offer a contract to the highest responsible bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the contract to the successful bidder until the consent of the Indian mineral owner has been obtained.

(f) No oil or gas contract with an Indian mineral owner shall exceed a term of ten years and as long thereafter as minerals are produced in paying quantities, except where a longer period is permitted or a shorter period required by Federal law. For the purposes of this provision, the term of a contract entered into by the exercise of an option shall be measured from the date of the exercise of the option.

(g) Where a mining contract specifies a term of years and "as long thereafter as minerals are produced in paying quantities" or similar phrase, the term "paying quantities" shall mean:

(1) That quantity of recovered minerals which produces during the fiscal year of the contract, an after-tax profit to the operator, over and above the total cost of: extraction, processing, and handling to the point of sale; all rents and royalties paid under the contract; all salaries and expenses incident to such extraction, processing, and handling; all taxes incident thereto; all depreciation on salvageable production equipment; all administrative expenses attributable to the operation; and any other expenses so attributable, such as business licenses, repair of equipment, and transportation; and also

(2) That quantity of minerals which produces sufficient income so that a reasonably prudent operator would continue to operate in a diligent manner for the purpose of making a profit from the subject operation and not merely for speculation.

(h) In order to continue production in paying quantities, the operator must not suspend mining or production operations at any time for a period of 30 days or more without the prior express written approval of the Secretary unless production is impossible as a result of an Act of God or some other cause clearly beyond the operator's power to control. At the expiration of the principal term of the mining or production contract and at the end of each fiscal year thereafter until expiration of the contract, the operator shall present sufficiently detailed written evidence to the Indian mineral owner and to the Secretary to demonstrate under both standards above that minerals are being produced in paying quantities.

(i) Where development or production contracts are for a primary term of less than ten years, it may be provided in the contract that if actual drilling operations have commenced prior to the end of the primary term and are being diligently prosecuted at the expiration of the primary term, and subject to the consent of the Indian mineral owner, the operator shall have the right to drill such

well or wells to completion with reasonable diligence and, if oil or gas as covered by the contract is found in paying quantities, the contract shall continue in force and effect as if such well or wells had been completed within the primary term.

(j) Oil and/or gas leases by tribal mineral owners, who are not organized under sections 16 and 17 of the Act of June 18, 1934 (25 U.S.C. 476, 477), shall be entered into in accordance with the procedures in subsection (c) of this section. However, if no satisfactory bid is received, or the accepted bidder fails to complete the lease, the Secretary may readvertise the lease for sale, or the lease may be let through private negotiations, subject to the consent of the tribal governing body and the approval of the Secretary pursuant to § 182.13 of this part. This provision is not applicable to oil and gas contracts other than leases.

§ 182.13 Approval of contracts.

An oil and/or gas contract shall be approved by the Secretary if he determines that the following conditions have been met:

- (1) The contract provides fair and reasonable remuneration to the Indian mineral owner;
- (2) The contract does not have adverse cultural or environmental consequences sufficient to outweigh its benefits to the Indian mineral owner;
- (3) The contract complies with the requirements of this Part, all other applicable laws and regulations, and tribal law where not inconsistent with federal law.

§ 182.14 Persons signing in a representative capacity; furnishing of corporate and other information.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, contracts or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing, except a surety agent, is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and/or gas shall file with the instrument a statement showing:

- (1) The state in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the state where the land described in the instrument is situated; and
- (2) That it has power to conduct all business and operations as described in the instrument; and
- (3) Such other information as the Secretary may require in the exercise of his trust responsibility to the Indian mineral owner.

(c) The Secretary may, either before or after the approval of a permit, contract, assignment, or bond call for any additional information necessary to carry out the regulations in this Part,

other applicable laws and regulations and his trust responsibility to the Indian mineral owner. Failure to furnish the requested information will be deemed sufficient cause for disapproval or cancellation of the instrument, whichever is appropriate.

§ 182.15 Bonds.

(a) The Secretary may require a geological or geophysical permittee to furnish a surety bond in such amount as he deems advisable.

(b) Operators shall furnish a bond with each contract and assignees shall furnish a bond with each assignment in a sum of at least double the amount of the annual rental, but in no case less than \$1,000 per quarter-section or fractional quarter-section covered by a contract, and conditioned upon compliance with all the terms of the contract. Before beginning drilling operations, an additional bond in an amount to be determined by the Supervisor and the approving official must be furnished, but in no event less than \$10,000.

(c) In lieu of the lease or drilling bonds required under paragraph (b) of this section, the operator may file one bond for \$50,000 for all oil and gas contracts in any one state, or such lesser jurisdiction as determined by the Secretary, including contracts on that part of an Indian reservation extending into states contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, a operator or permittee may file a bond in the sum of \$150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonds shall be corporate surety bonds.

(f) The right is specifically reserved to the Secretary to increase the amount of bonds in his discretion.

§ 182.16 Rentals, minimum royalty, production royalty.

(a) An oil or gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of not less than \$2 per acre or such other rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty on production paid during any year aggregates less than \$2.50 per acre, the lessee must pay the difference at the end of the lease year. On unitized leases, the minimum royalty shall be payable only on the participating acreage.

(c) Unless otherwise provided by the Secretary (or his authorized representative prior to the offering of land for oil and gas leases), a royalty of not less than 16% per cent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered at the time of production for a significant portion of the oil of the same gravity, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the Oil and Gas Supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed more evidence of or conclusive evidence of such value.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, gas shall be furnished by the lessee to any tribally-owned building or enterprise, at a rate not to exceed the price-less-royalty being received by a gas purchaser, and by means of a regulator installed, connected to the well and maintained by the lessee. *Provided*, That this requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that waste would not result. Gas furnished to the tribe under this section may be terminated only with the approval of the Superintendent.

§ 182.17 Manner of payments.

(a) All payments shall be paid to the Secretary or such other party as he may designate and shall be made at such time as provided in the advertisement, permit, or contract. When there is production, each payment shall be transmitted through the Supervisor, with a statement by the operator in duplicate, showing the specific contract payment that the remittance is intended to cover, identified by both Departmental Contract and other lease or contract number. Such statement shall identify each remittance by number, date, amount, name of each payee, and shall show the total amount paid and shall be supported by a copy of the purchaser's settlement or pipeline statement for each lease under which royalties are paid.

(b) Operators may make arrangements with the purchasers of oil and gas for the payment of the royalties as provided in the lease and regulations, but such arrangement, if made, shall not relieve the operator from responsibility should the purchaser fail or refuse to pay the royalties when due.

§ 182.18 Inspection of premises, books and accounts.

Operators shall agree to allow Indian mineral owners, their representatives or any authorized representative of the Secretary to enter, from time to time, all parts of the contracted premises for the purpose of inspection, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the contracts and

regulations; and their books and records, showing manner of operations and persons interested, shall be open at all times for examination by the Secretary and the Indian mineral owner.

§ 182.19 Assignments, operating and development agreements, and overriding royalties.

(a) *Assignments.* Approved contracts hereafter approved, or any interest therein, may be assigned or transferred only with the approval of the Secretary. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. An operator must assign either his entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area. *Provided*, That when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons such assignment shall be subject to both the consent of the Secretary and the Indian mineral owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all the terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of the execution by all parties.

(b) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an assignment. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of the operator with the Indian mineral owner under his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section. An agreement creating overriding royalties or payments out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

(c) *Operating or development contracts:* The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval

merely authorizes entry on the lease or contracted area for the purpose of development work.

§ 182.20 Restrictions on operations, work-over and shut-in applications.

(a) The Secretary may impose such restrictions as in his judgment are necessary for the protection of Indian-owned natural resources.

(b) The Secretary may, under such terms and conditions as he may prescribe and after obtaining the consent of any Indian mineral owner affected, authorize suspension of operating and producing requirements whenever it is considered that marketing facilities are inadequate or economic conditions unsatisfactory. Such suspensions shall not extend beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396(a)-(g)); Applications by operators for relief from operating and producing requirements shall be filed in triplicate in the Office of the Supervisor and a copy thereof filed with the Superintendent. Complete information must be furnished showing the necessity for such relief. Suspension of operations and production shall not relieve the operator from the obligations of continued payment of annual rental or the minimum royalty. The operator shall pay as shut-in royalty an additional \$2.50 per acre in advance for each annual period of suspension, provided that if the period of suspension is less than 12 months, the rate will be prorated. Said shut-in royalty shall not be recoverable out of royalties or otherwise from subsequent production.

(c) The Secretary may, after obtaining the consent of any Indian mineral owner affected, and under such terms and conditions as he may prescribe, authorize suspension of operating and producing whenever it is determined that reworking or drilling operations is in the best interests of the Indian mineral owner, *provided*, That such reworking or drilling operations are commenced within 60 days and thereafter conducted with reasonable diligence during the period of nonproduction. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other contract payments due under the terms of the contract.

§ 182.21 Unitization, communication and well spacing.

For the conservation and proper utilization of natural resources the Secretary, subject to obtaining the prior consent of the tribe where the tribe is the mineral owner, may approve, recognize and require that contracted areas shall be subject to cooperative or unit agreements, communication or drilling agreements and well spacing or development programs. All applications and documents incident to such agreements shall be filed with the Supervisor and a copy of the application fully describing the lands and listing the contracted areas shall be filed with the Superintendent.

§ 182.22 Contracts for subsurface storage of oil or gas.

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian mineral owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396) to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such storage fee or rental, or in lieu thereof, for a royalty or percentage payment other than that prescribed in the oil and gas production contract when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary may approve, subject to obtaining the prior consent to the Indian mineral owners, a provision in an oil and gas contract, under which storage of oil and gas is authorized, for continuance of the contract at lease for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for approval of the Secretary to permit retention of five copies by the Department after approval.

§ 182.23 Termination and cancellation, enforcement of orders.

(a) Any lease or contract area on which there has been no drilling, exploration or surface disturbance activity shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the due date. If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next office working day shall be deemed timely.

(b) If the Supervisor determines that a permittee or operator subject to the regulations in this part has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or drilling plan, or the orders of the Supervisor, and such noncompliance does not threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources, the oil and gas supervisor shall serve a notice of noncompliance upon the permittee or

operator by delivery in person or mailed to him at his last known address. Failure of the permittee or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Supervisor or to initiate an appeal pursuant to Part 290 of Title 30 of the Code of Federal Regulations shall be grounds for suspension of operations subject to such notice by the Supervisor or his recommendations for the initiation of action for cancellation of the contract and forfeiture of any compliance bonds.

(c) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, laws, terms of the drilling plan or contract, or the orders of the Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Supervisor when such noncompliance has been corrected.

(d) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this Part which fail to comply with the provisions of this Part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or drilling plan, or the orders of the Supervisor, and which threaten immediate and serious damage to the environment, the resource or deposit being mined, or other valuable mineral deposits or other resources, the Supervisor shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in Part 290 of Title 30 of the Code of Federal Regulations. Compliance with such order shall not be suspended by reason of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian mineral owner or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

(e) The Supervisor shall investigate all claims of the Indian mineral owner regarding permittee's or operator's failure to comply with the provisions of this Part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or drilling plan, or the orders of the Supervisor. The Supervisor shall consult with the Superintendent and the Indian mineral owner, where possible, prior to taking any action pursuant to this section.

(f) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the contract or available in law or equity.

(g) Termination for non-payment of rental and/or cancellation as provided

in this section shall not relieve the permittee or contractor, or the sureties, from liabilities for payment of rental, other than rental referred to in paragraph (a) of this section, or other obligations under the contract.

§ 182.24 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of \$25.

PART 183—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

4. It is proposed to amend Part 183:

a. By adding paragraph (k) and (l) to § 183.1 as follows:

§ 183.1 Definitions.

As used in this Part 183, terms shall have the meaning set forth in this section.

(k) "Oil well" means any well which produces one (1) barrel or more of crude petroleum oil for each 15,000 standard cubic feet of natural gas.

(l) "Gas well" means any well which:

- (i) produces natural gas not associated with crude petroleum oil at the time of production or
- (ii) produces more than 15,000 standard cubic feet of natural gas to each barrel of crude petroleum oil from the same producing formation.

b. By adding paragraph (f) to § 183.2 as follows:

(f) The Osage Tribal Council may utilize the following procedures among others, in entering into a mining lease. A contact may be entered into through competitive bidding as outlined in Sec. 183.2(b), negotiation, or a combination of both. The Osage Tribal Council may also request the Superintendent to undertake the preparation, advertisement and negotiation. The Superintendent may approve any such contract made by the Osage Tribal Council.

c. By revising paragraphs (a), (b), and (c) of § 183.6 to read as follows:

§ 183.6 Bonds.

Lessee shall furnish with each lease a corporate surety bond acceptable to the Superintendent as follows:

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in the penal sum of not less than \$2,500 for each quarter section or fractional quarter section covered by said lease: *Provided, however*, That one bond in the penal sum of not less than \$50,000 may be filed on Form G covering all leases on the Osage Mineral Estate not in excess of 10,240 acres to which Lessee is or may become a party.

(b) In lieu of the bonds required under paragraph (a) of this section, a bond in the penal sum of \$150,000 may be filed on Form 5-5438 for full nationwide coverage of all leases, without geographic

or acreage limitation, to which the Lessee is or may become a party.

(c) A bond on Form H shall be filed in the penal sum of not less than \$2,500 covering a lease acquired through assignment where the assignee does not have a collective bond, or the corporate surety does not execute its consent to remain bound under the original bond given to secure the faithful performance of the terms and conditions of the lease.

d. By revising paragraphs (a), and (b) of § 183.9 to read as follows:

§ 183.9 Rental and drilling obligations.

(a) Oil leases, gas leases, and combination oil and gas leases. Unless lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than \$1 per acre for an oil or gas lease, or not less than \$2 per acre for a combination oil and gas lease, shall be paid before the end of the first year of the lease. The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent, or shall have been mailed as indicated by postmark on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further payment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part: *Provided*, That the Superintendent in his discretion may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development. If Lessee refuses to comply, the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation as to the acreage or horizon the further development of which was ordered: *Provided further*, That the Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when, in his judgment, such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Tribe. The Superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production. If a Lessee holds both an oil

lease and a gas lease covering the same acreage, such Lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Tribal Council, grant an extension of the primary term of a lease on which the actual drilling of a well shall have commenced within the term thereof or for the purpose of enabling Lessee to obtain a market for his oil and/or gas production.

e. By revising § 183.10 to read as follows:

§ 183.10 Term of lease.

Leases issued hereunder shall be for a primary term as established by the Osage Tribal Council, approved by the Superintendent, and so stated in the notice of sale of such leases, and so long thereafter as the minerals specified are produced in paying quantities.

f. By revising paragraphs (a) and (b) of § 183.11 to read as follows:

§ 183.11 Royalty payments.

(a) *Royalty on oil*—(1) *Royalty rate.* Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 16½ percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: *Provided*, That when the quantity of oil taken from all the producing wells on any quarter-section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to a revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than 12½ percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment shall be made at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, or the highest posted or offered price by a major purchaser in the Kansas-Oklahoma area whichever is higher on the day of the sale or removal. Where different prices are paid simultaneously for oil from a lease and the highest such price exceeds the higher of the aforementioned prices, then that price shall be the basis of royalty on all oil from said lease.

(3) *Royalty in kind.* Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a

period not to exceed 60 days from date of production after notice of such election.

(b) *Royalty on gas*—(1) *Oil Lease.* All casinghead gas shall belong to the oil Lessee subject to any rights under existing gas leases. All casinghead gas removed from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and subject to a royalty of not less than 16½ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If oil Lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his or others, a royalty of not less than 16½ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized by the gas Lessee, subject to the prescribed royalty of not less than 16½ percent of the market value.

(2) *Gas lease.* Lessee shall pay a royalty of not less than 16½ percent of the market value of all natural gas and products extracted therefrom produced and sold from his lease. Natural gas used in the reasonable and prudent operation and development of said lease shall be exempted from royalty payment.

(3) *Combination oil and gas lease.* Lessee shall pay royalty as provided in (1) and (2) above.

g. By deleting the proviso at the end of paragraph (e) of § 183.18 so that it reads as follows:

§ 183.18 Information to be given surface owners prior to commencement of drilling operations.

(e) Where the surface owner or his representative is not a resident of or is not physically present in Osage County, then the Superintendent shall be so advised whereupon the Superintendent may authorize Lessee to proceed with operations.

h. By revising paragraphs (a) and (b) of § 183.19 to read as follows:

§ 183.19 Use of surface land.

(a) Lessee or his authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said route shall be set by the Superintendent. The right to use water for lease operations is set out in § 183.24. Lessee shall conduct his operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any nuisance to be

maintained on the premises under his control.

(b) Before commencing a drilling operation, Lessee shall pay or tender to the surface owner commencement money in the amount of \$25 per seismic shot hole and commencement money in the amount of \$300 for each well, after which Lessee shall be entitled to immediate possession of the drilling site. Commencement money will not be required for the drilling of a well which was drilled under the original lease contract. A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner does not in any way affect his right to compensation for damages as described in § 183.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

h. By revising paragraphs (c) and (d) of § 183.20 to read as follows:

§ 183.20 Settlement of damages claimed.

(c) In settlement of damages on restricted land all sums due and payable shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface Lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

i. By revising § 183.44 to read as follows:

§ 183.44 Hearings and appeals.

Any person, firm, or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, pursuant to the regulations in this part, may file with the Superintendent within 30 days an application for modification or revocation of such decision or order. The Superintendent shall give notice of the time and place and conduct a hearing upon the application within 10 days after its receipt by him. If the applicant is not satisfied with the decision of the Superintendent, an appeal may be taken as provided in 25 CFR Part 2.

RAYMOND V. BUTLER,
Acting Commissioner
of Indian Affairs.

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