
Tuesday
July 12, 1983

FEDERAL REGISTER

Selected Subjects

- Communications Common Carriers**
Federal Communications Commission
- Crime Insurance**
Federal Emergency Management Agency
- Electric Utilities**
Rural Electrification Administration
- Environmental Protection**
Forest Service
- Fisheries**
National Oceanic and Atmospheric Administration
- Food Additives**
Food and Drug Administration
- Freedom of Information**
General Services Administration
- Government Employees**
Personnel Management Office
- Imports**
Agricultural Marketing Service
- Marketing Agreements**
Agricultural Marketing Service
- Mineral Resources**
Indian Affairs Bureau
- Radiation Protection**
Public Health Service

CONTINUED INSIDE

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Parts 211, 212, and 225****Mining Regulations**

June 15, 1983.

AGENCY: Bureau of Indian Affairs, Interior.**ACTION:** Proposed rule.

SUMMARY: This document proposes new rules and regulations intended to implement the Indian Mineral Development Act of 1982. In addition, the document proposes to revise existing rules and regulations in 25 CFR Part 211 governing the leasing of tribal lands and 25 CFR Part 212 governing the leasing of allotted Indian lands. The intended effect is to ensure that Indian mineral owners receive at least fair market value for the disposition of their mineral resources, ensure that any adverse environmental and cultural impacts resulting from such development is minimized, and to permit Indian mineral owners to enter into contracts which allow for more responsibility in overseeing and greater flexibility in disposing of their mineral resources.

DATE: Comments on this proposed rulemaking must be received by September 12, 1983.

ADDRESS: Comments should be submitted to Program Officer, Division of Energy and Mineral Resources, Bureau of Indian Affairs, 730 Simms Street, Room 239, Golden, Colorado 80401. Comments pertaining to the rule's information collections should be addressed to: Office of Information and Regulatory Affairs Office of Management and Budget, Attention: Desk Officer for Interior, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David Baldwin, (303) 234-6961, or Tommy Riggs, (202) 343-3722.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8. The principal authors of this proposed rulemaking are David Baldwin, Tommy Riggs, Don Jones, Richard Borneman of the Division of Energy and Mineral Resources, Bureau of Indian Affairs, and Edward Edwards, Assistant Area Director, Sacramento Area Office, Bureau of Indian Affairs, with the assistance of Chedville Martin, Office of the Solicitor, Division of Indian Affairs.

Section 3 of the Indian Mineral Development Act of 1982 (25 U.S.C. 2102

hereinafter "the Act") authorizes any Indian tribe to enter into joint ventures, leases and other types of negotiated agreements (referred to as "minerals agreement"), subject to the approval of the Secretary of the Interior and any limitation or provision contained in the tribe's constitution or charter. The Act also permits individual Indians owning beneficial or restricted interests in mineral resources to include their resources in an agreement with an Indian tribe, subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian owner. The 1982 Act does not supersede the Act of May 11, 1938 (52 Stat. 347, 25 U.S.C. 396a), which governs the leasing of tribal lands, or the Act of March 3, 1909, as amended (35 Stat. 783; 25 U.S.C. 396) which governs the leasing of allotted lands. Instead it supplements those acts by permitting Indian mineral owners to elect whether they wish to offer their mineral resources for lease by competitive bidding, or enter into direct negotiations for a minerals agreement, or by a combination of competitive bidding and negotiations.

It is proposed that the regulations be organized into two parts—Part 211 which governs the disposition of minerals other than oil and gas, and Part 225 which governs contracts for oil and gas. In turn, each part is subdivided into Subparts A, B and C. Subpart A would contain those rules and regulations specifically intended to implement the 1982 Act. Subpart B would set forth rules and regulations governing mining and oil and gas leases entered into pursuant to the 1938 and 1909 Acts. This subpart is basically a revision and reorganization of mineral leasing regulations which have been in effect since 1938. Subpart C of the two parts would contain general rules which cover such subjects as environmental assessments, assignments, bonding, inspections, penalties and appeals, and which apply regardless of the type of contract involved. This revision will consolidate the existing regulations and eliminate unnecessary and confusing rules.

The proposed rules would replace all existing rules governing the disposition of minerals and oil and gas currently found in 25 CFR Parts 211—Leasing of tribal lands for mining (formerly Part 171, redesignated March 30, 1982) and Part 212—Leasing of allotted lands for mining (formerly Part 172). The proposed rules would not affect leasing and mining and oil and gas development governed by Parts 213, 214, 215 and 216 (formerly Parts 174, 175, 176, and 177, respectively). Interested parties should be aware that any agreements involving

surface mining operations must require that the operator meet the requirements of Subpart A of Part 216, Surface Exploration, Mining and Reclamation of this title.

Readers will note that the proposed regulations refer to the "Secretary" as the principal actor in every instance. e.g., "Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award prospecting and mining leases * * *". It should be understood that the term "Secretary" means the Secretary of the Interior "or his authorized representative," and that the duties and responsibilities to perform the various actions and to render required decisions will be delegated to the proper Department officials in the Bureau of Indian Affairs, the Bureau of Land Management of the Minerals Management Service when the regulations become effective. However, Section 4(d) of the Act (25 U.S.C. 2103) prohibits the authority to disapprove a proposed minerals agreement from being delegated to any official of the Department other than the Assistant Secretary of the Interior for Indian Affairs.

Interested parties are invited to comment on any and all aspects of the proposed regulations. However, the Department particularly invites readers to state their views on certain new sections, such as the provisions relating to geological and geophysical permits (§ 225.47); provisions for unitization (§ 225.55) and termination and cancellation (§ 225.57). Comments may also be directed to the feasibility of combining these two regulations into one general regulation with specific subsections pertaining to mineral or oil and gas activity when necessary.

The comment period for this proposal is 60 days. However, a draft set of regulations was circulated to Indian tribes, national organizations, and tribal attorneys with a request for comments. Twenty-four responses were received and many of the suggestions received have been incorporated in this proposal.

Information Collection Requirements

The information collection requirements contained in §§ 211.5(d), 211.21(c)(3) and (c)(5), 211.22(e), 211.36(a), 211.39 (b) and (c), 211.42, 211.43, 211.44(a) and 211.45(b) in Part 211 and similar information requirements in §§ 225.23(d), 225.31(c)(3) and (c)(5), 225.32(d), 225.34, 225.45(a)(1) and (a)(4), 225.46 (c) and (d), 225.47 (b) and (c), 225.49(b), 225.52, 225.54(b) and 225.55(a) of Part 225 will be submitted to the Office of Management and Budget as

required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. Comments on this rule's information collection should be submitted to the Office of Management and Budget's Interior Desk Officer. (See address section).

E.O. 12291, Federal Regulation

The Bureau of Indian Affairs has determined that this is not a major rule for the purposes of E.O. 12291 Federal Regulation, because it will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competitive, employment, investment; productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Deputy Assistant Secretary—Indian Affairs (Operations) has certified that these regulations will not have a significant economic impact on a substantial number of small entities, including small businesses, small organization units and small governmental jurisdictions.

It has been determined that the proposed rules do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C)).

List of Subjects

25 CFR Part 211

Indians—lands, Mineral resources, Mines, Exploration.

25 CFR Part 212

Indians—lands, Mineral resources, Mines, Oil and gas exploration.

25 CFR Part 225

Indians—lands, Oil and gas exploration.

For the reasons set out in the preamble, it is proposed that 25 CFR Part 211 be revised, 25 CFR Part 212 be removed and 25 CFR Part 225 be added to Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS)

Sec.

- 211.1 Purpose and scope.
211.2 Information collection.

Subpart A—Minerals Agreements

- 211.3 Definitions.
211.4 Authority to contract.
211.5 Negotiation procedures.
211.6 Approval of agreements.

Subpart B—Mining Leases

- 211.20 Scope.
211.21 Procedures for awarding leases.
211.22 Duration of leases.

Subpart C—General

- 211.30 Scope.
211.31 Authority and responsibility of Authorized Officer.
211.32 Authority and responsibility of the Minerals Management Service (MMS).
211.33 Definitions.
211.34 Approval of amendments to contracts.
211.35 Removal of restrictions.
211.36 Geological and geophysical permits.
211.37 Economic assessments.
211.38 Environmental assessments.
211.39 Persons signing in a representative capacity.
211.40 Bonds.
211.41 Manner of payments.
211.42 Recordkeeping.
211.43 Mining contracts—inherited lands.
211.44 Assignments; overriding royalties.
211.45 Enforcement of orders.
211.46 Legal review.
211.47 Penalties.
211.48 Appeals.
211.49 Fees.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 848, 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. 880); Secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); Act of August 11, 1978 (92 Stat. 469, 42 U.S.C. 1996); Act of December 22, 1982 (92 Stat. 1938; 25 U.S.C. 2101).

§ 211.1 Purpose and scope.

(a) The regulations in this part govern contracts for prospecting and mining of Indian-owned minerals, other than oil and gas and geothermal. Subpart A—*Minerals Agreements* establishes the procedures for the approval of minerals agreements entered into pursuant to the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2102). Subpart B—*Mining Leases* contains regulations governing procedures for the issuance of mining leases on tribal and allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 347; 30 U.S.C. 396 a) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396. Subpart C—*General* contains miscellaneous

provisions which apply to the issuance of contracts for prospecting and mining under both Subparts A and B. These regulations are intended to ensure that Indian owners desiring to have their minerals (except oil and gas) developed receive, at least, fair market value for the disposition of their mineral resources; to ensure that any adverse environmental and cultural impact resulting from such development is minimized, and to permit Indian mineral owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their mineral resources.

(b) The regulations in this part do not effect leasing and mining governed by the regulations in 25 CFR Parts 213, 214, 215, and 226.

(c) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, the rate of royalty, rental, or acreage unless agreed to by all parties to the contract.

(d) Whenever the masculine gender is used in these regulations, the text is to be construed to include the feminine gender where appropriate.

§ 211.2 Information collection. [Reserved]

Subpart A—Minerals Agreements

§ 211.3 Definitions.

As used in the regulations in this subpart, the following terms have the specified meaning except where otherwise indicated—

(a) "Act" means the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

(b) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial, lease (other than a lease entered into pursuant to the Act May 11, 1938 and the Act of March 3, 1909), or other agreement, or amendment, supplement, or other modification of such agreement, providing for the exploration for, or extraction, processing, or other development of minerals, or providing for the sale or disposition of the production or products of such mineral resources.

§ 211.4 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement or any amendment, supplement or other modification of such agreement providing for the exploration for, or extraction, processing, or other development of, uranium, coal, or other energy or

nonenergy mineral resources (hereinafter referred to as "mineral resources") in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

(b) Any individual Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 211.5 Negotiation procedures.

(a) A tribe or individual Indian owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation, and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement consideration should be given to the inclusion of the following:

(1) A general statement identifying the parties to the agreement, a description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid the operator;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment; if any,

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision; and

(14) Provisions describing the rights of the parties to terminate or suspend the agreement and the procedures to be followed in the event of termination of the agreement.

(c) In order to avoid delays in obtaining approval of a proposed agreement the tribe should confer with the Secretary prior to formally executing the agreement and seek his advice as to whether the agreement appears to meet the requirements of § 211.5 or whether

modifications, additions, or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, should be forwarded to the Secretary for his approval.

§ 211.6 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within (1) one hundred and eighty days after submission, or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C)) or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty days prior to formal approval or disapproval of any mineral agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement by certified mail. The written findings shall include an environmental assessment which meets the requirements of § 211.38 and an economic assessment as described in § 211.37. The Secretary may include in the written findings recommendations for changes to the agreement to qualify it for approval. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 211.38) possessed by the Department of the Interior regarding the terms and conditions of the mineral agreement, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected

Indian or Indian tribe. The letter containing the written findings should be headed with: PRIVILEGED PROPRIETARY INFORMATION OF THE [Name of tribe or Indian].

(d) A mineral agreement shall be approved by the Secretary if he determines in the written findings that the following conditions are met:

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

(2) The mineral agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected sufficient to outweigh its benefits to the Indian mineral owner;

(3) The mineral agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written finding required by paragraph (c) of this section.

(f) "Fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section means a return on the Indian-owned mineral:

(1) not less than that received by non-Indian mineral owners in comparable contemporary contractual arrangements for the development of like minerals;

(2) not less than that received by the Federal Government in comparable contractual arrangements for the development of like minerals; and

(3) not less than the minimum rental royalty payments which would be applicable to like minerals were they federally-owned.

(g) If any representative of the Secretary to whom authority to review proposed mineral agreements has been delegated believes that an agreement should not be approved, he shall prepare a written statement of the reasons why the agreement should not be approved and forward this statement, together with the agreement and all other pertinent documents, to the Assistant Secretary—Indian affairs for his decision.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred to him containing a recommendation that it be disapproved, and make the final decision for the Department.

Subpart B—Mining Leases

§ 211.20 Scope.

The regulations in this subpart set forth the procedures to be followed

where a tribe or individual Indian mineral owner elects to enter into a mining lease through a competitive bidding procedure under the Act of May 11, 1938 (25 U.S.C. 396a) which governs the leasing of tribal lands, or the Act of March 3, 1906 (25 U.S.C. 396) which governs competitive leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this subpart, or by negotiation under the procedures in this subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation.

§ 211.21 Procedures for awarding leases.

(a) Prospecting and mining leases by tribal mineral owners through competitive bidding shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the tribal mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the tribal mineral owner, or the lease may be let through private negotiations in accordance with Subpart A of this part.

(b) Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award prospecting and mining leases on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a). If requested by a potential prospector or operator interested in acquiring rights to 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 and mining exploration or production.

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

(1) Leases shall be advertised for a bonus consideration under sealed bid,

oral auction, or a combination of both, and a notice of such advertisement shall be published 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, where sufficient information exists and after consultation with the Authorized Officer, 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. The complete text of the advertisement must be published in at least one local newspaper and such notice must include in addition to the aforementioned terms, a description of the specific tracts to be offered.

(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 paragraph (a) of this section, or if the successful bidder fails to complete the lease, or if the Indian mineral owner refuses to accept the highest bid, the Secretary may readvertise the lease, or if deemed advisable, and in accordance with paragraph (b) of this section, he may attempt to award a lease by private negotiations, provided that he shall not award a lease by private negotiations without the written concurrence of the mineral owner unless he is exercising his authority under subsection (c) of this section.

(5) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$25 filing fee, his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at the time. However, for good and explicit reasons the Secretary may grant an extension of time of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing will result either in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner, or, at the Indian mineral owner's option, readvertisement of the forfeited lease with the defaulted bidder required to pay any difference between

his bid and the high bid received at the subsequent sale, plus the cost of advertising for such subsequent sale. The readvertisement option must be reflected in the original advertisement to be effective.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified 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 lease to any bidder until the consent of the Indian mineral owner has been obtained.

§ 211.22 Duration of leases.

(a) A mining lease with an Indian mineral owner entered into pursuant to the regulations in this Subpart shall not exceed a term of ten years or as long thereafter as minerals are produced in paying quantities. For the purpose of this provision, the term of a mining lease entered into by means of the exercise of an option shall be measured from the date of the exercise of the option. All provisions in leases governing their duration shall be measured from the date of approval, unless otherwise provided in the lease.

(b) When a mining lease 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: That quantity of recovered minerals which produces during the fiscal year of the lease a profit to the operator over and above the total cost of: Extraction (exclusive of exploration), processing (including beneficiation), and handling to the point of sales; all rents and royalties paid under the lease, all salaries and employee expenses directly related to such extraction, processing, and handling; all taxes incident thereto except tribal severance taxes; and business licenses, repairs of equipment, and transportation.

(c) In order to continue production in paying quantities the operator must not suspend mining operations at any time for a period of 60 days or more without the prior express written approval by the Secretary with the consent of the Indian mineral owner, unless production is impossible as a result of an act of God or some other cause clearly beyond the operator's control.

(d) Express written approval by the Secretary with the consent of the Indian mineral owner, for the suspension of mining operations for more than 60 days may be granted upon negotiation of a minimum rent, not to be credited against future production royalties, which shall

be paid in lieu of a production royalty, and in addition to any other rents under the lease.

(e) At the expiration of the primary term of the mining lease and at the end of each fiscal year thereafter until expiration of the lease, the operator shall present sufficiently detailed written evidence to the Indian mineral owner and to the Secretary to demonstrate that minerals are being produced in paying quantities.

Subpart C—General

§ 211.30 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this Part.

§ 211.31 Authority and responsibility of Authorized Officer.

The Authorized Officer shall approve, supervise, and direct operations under contracts governed by the regulations of this part; furnish to the Secretary and the Indian mineral owner scientific and technical information and advice; and to ascertain and record the amount of production. He shall also be responsible for reviewing and reporting to the Secretary his recommendations concerning any proposed contract.

§ 211.32 Authority and responsibility of the Minerals Management Service (MMS).

The MMS, upon establishment of proper procedures, shall collect and record rental, royalties, and all other payments due under any contract entered into under the regulations in this part. These responsibilities include the auditing of lessee documents, reports and payments; the disbursement of revenue collected; the development and distribution of royalty and rental regulations and guidelines; and the obtaining of lessee sales, contracts agreements, and other royalty records, when requested, in order to audit product values, and processing and transportation allowances.

§ 211.33 Definitions.

As used in this part:

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

(b) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs.

(c) "Superintendent" means the Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a minerals agreement under this part.

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

(e) "Indian mineral owner" means:

(1) any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(f) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil and gas, and includes but is not limited to, geothermal, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

(g) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, 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 5,000 cubic yards.

(h) "Authorized Officer" means any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

(i) "Minerals Management Service (MMS) Official" means any person authorized by law or by lawful delegation of authority in the Minerals Management Service to perform the duties described.

(j) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(k) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither-independent shape nor volume, but tends to expand indefinitely; a substance that exists in a

gaseous or rarefied state under standard temperature and pressure conditions.

(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 minerals agreement 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 mineral contract to prospect or explore for Indian-owned minerals.

(n) "Contract" means any lease or minerals agreement.

§ 211.34 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this Part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if he determines that the contract, as modified, meets the criteria for approval set forth in § 211.6 or § 211.21.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 211.6 or § 211.21 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 211.37 of this part, and an environmental and cultural assessment pursuant to § 211.38 of this part.

(c) The exercise of options to lease for the mining of Indian owned minerals, which options were not exercised prior to the effective date of these regulations, shall be approved by the Secretary pursuant to § 211.21 of this part if the lease meets the conditions of that section.

§ 211.35 Removal of restrictions.

(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary 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 Indian mineral owner(s).

(b) 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 unrestricted minerals owner shall furnish to him satisfactory evidence that adequate arrangements have been made to account for the mineral resources 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 Secretary, contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement 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 operations, completion of operations, 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.

§ 211.36 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in a mining contract entered into pursuant to this Part may be approved by the Secretary under the following conditions:

(1) The permit must describe the area to be explored and must state the duration of the permit and the consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract or authorize the production or removal of minerals;

(3)(i) The permittee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was

paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interest in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If the lessee or his authorized representative and the surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(ii) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

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

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

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and to the Indian mineral owner when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information until such time as the permit has expired or until the bidding process is completed.

(5) The permittee will be required to obtain the rights of ingress or egress from the surface owner.

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known or a majority thereof, consent to the permit;

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been

determined and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in a mining contract entered into pursuant to this Part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of a permit.

(c) For the purposes of these regulations a "geological and geophysical permit" means a written authorization from the Indian mineral owner to conduct on-site surveys to locate mineral deposits on the lands included in the permit by mechanical, electronic or other means.

§ 211.37 Economic assessments.

(a) An economic assessment, where required, shall include the following findings to the extent of their applicability to mineral exploration and production:

(1) Whether there are assurances in the contract that prospecting and mining operations will be conducted with appropriate diligence;

(2) Whether water in the amount needed for purposes of operations under the contract is available.

(3) Whether production royalties or other form of return on the minerals is adequate.

(4) If a method of contracting other than the competitive bid procedure is used, whether that method clearly provides the Indian mineral owner with a greater share of the return on the production of his mineral than he might otherwise obtain through competitive bidding.

(5) Whether provisions for resolving disputes that may arise between the parties to the agreement are adequate.

(6) Whether the configuration of the area to be developed (the mining unit) is contained in a reasonable compact body and the acreage does not exceed that necessary to promote the orderly development of the mineral.

(b) [Reserved].

§ 211.38 Environmental assessments.

(a) An environmental assessment shall be prepared in accordance with regulations promulgated by the Council

of Environmental Quality, 40 CFR 1508.9 and the Environmental Quality Handbook, 30 BIAM Supplement 1. When it is recognized prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made specifically available to the Indian oil and gas owner and to the governing body of the local Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed mineral agreement.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, the Secretary shall, prior to approval of a contract, perform surveys of the cultural resources so as to evaluate and make a determination of the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property is preserved.

§ 211.39 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, mineral agreements, leases, or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing, 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 minerals shall file with their 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;

(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, mineral agreement, assignment, or bond, call for any reasonable 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.

§ 211.40 Bonds.

(a) The Secretary may require a prospector to furnish a surety bond in such amount as he deems appropriate.

(b) Before beginning mining operations, the operator shall furnish a bond in an amount to be determined by the Authorized Officer and the approving official.

(c) Bonds shall be by corporate surety bonds.

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

(e) In lieu of the bond required in paragraphs (a) and (b) of this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

§ 211.41 Manner of payments.

Unless otherwise provided in an approved contract, 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 contract.

§ 211.42 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations done under a 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 paragraph (a) of this section, all records regarding the financial structure of the

prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination and reproduction by the Secretary, the Authorized Officer, and tribal mineral owners, upon request, accompanied by written assurances that such records will be held in confidence, 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, he may require that the cost thereof be borne by the operator.

(c) All records maintained under paragraphs (a) and (b) of this section will be furnished MMS in accordance with MMS regulations and guidelines. MMS will safeguard such records in accordance with appropriate laws, regulations, and guidelines.

§ 211.43 Mining contracts—Inherited lands.

(a) The Secretary may execute mining contracts on behalf of unknown owners of future contingent interests and on behalf of minors without legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined or some or all of them cannot be located, mining contracts involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under provisions of § 211.21 of Subpart B.

(c) If the heirs include a life tenant, the mining contract must be accompanied by an agreement between such life tenant and the remaindermen, providing for the division of the rents and royalties subject to approval of the Secretary.

(d) The Secretary may approve a minerals contract where less than 100 percent of the undivided mineral interest is committed to the contract and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) 51 percent or more of the undivided mineral interest is committed to the contract;

(2) The operator is required to submit a certified statement containing evidence of the Indian mineral owner's refusal to consent to the contract.

(3) The operator is required to submit, and obtain the approval of the Secretary, a plan describing how the operator will account to the non-consenting mineral interest owners for

all income attributable to their undivided interest.

(4) Non-consenting mineral owners receive certified written notice that the Bureau proposes to approve a contract affecting their undivided interest without their consent within 10 days from receipt of the notice.

(e) The Secretary shall provide all non-consenting mineral owners with certified written notice that he has approved the contract affecting their undivided interest without their consent.

§ 211.44 Assignments; overriding royalties.

(a) No assignment or sublease of any interest in a contract entered into pursuant to this part shall be effective without the approval of the Indian mineral owner and the Secretary pursuant to and subject to the criteria of § 211.6 of this part. Approval shall not relieve the assignor of his obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner, releases the assignor of his obligations under the contract, or the Secretary 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 an 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 216 of this title, including the requirement of Secretarial approval prior to abandonment.

(c) A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all of the parties.

§ 211.45 Enforcement of orders.

(a) If the Secretary determines that a prospector or operator 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 mining plan, his orders or the orders of the Authorized Officer 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 by certified mail 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 Part 2 of this title shall be grounds for suspension of operations subject to such notice by the Secretary, or grounds for suspension of operations subject to such notice by the Secretary, or grounds for 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 Secretary or the Authorized Officer, 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, his orders or the orders of the Authorized Officer, and which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits 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 an order may be appealed as provided in Part 2 of this title. Compliance with such an 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) Nothing in this section is intended to supersede the independent authority of the Authorized Officer under 43 CFR Part 3000. However, the Authorized Officer and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(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 mineral agreement or otherwise available at law.

§ 211.46 Legal review.

When a contract has been entered into by methods other than the competitive bid procedure (whether by the Secretary or by the Indian mineral owner), or when a contract contains provisions not appearing in an approved Bureau lease form, the contract shall be submitted to the local Field or Regional Solicitor's Office for review for legal sufficiency, prior to approval by the Bureau.

§ 211.47 Penalties.

Violation of any of the terms or conditions of any mineral agreement or of the regulations under this part shall subject the permittee or operator to a fine of not more than \$1,000 per day for each day of such violation or noncompliance with the orders of either the Secretary or the Authorized Officer. *Provided*, that prior to the determination that a fine will be imposed as provided for in this section, the permittee or operator shall receive a 30 day notice with respect to the terms of the contract or of the regulations violated and, if he so requests, may receive a hearing before the Secretary. Payment of penalties more than 10 days after notice of final decision is given shall be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid. All penalties charged pursuant to this section shall be deposited with the Indian owners.

§ 211.48 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this title.

(b) Cessation orders issued pursuant to § 225.45 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian oil and gas owner or upon submission of a bond deemed adequate by both the Indian oil and gas owner and the Secretary to indemnify the Indian oil and gas owner from any resulting loss or damage.

§ 211.49 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 212—LEASING OF ALLOTTED LANDS FOR MINING [REMOVED]**PART 225—OIL AND GAS MINERAL CONTRACTS**

Sec.

- 225.1 Purpose and scope.
225.2 Information collection.

Subpart A—Minerals Agreements

- 225.20 Scope.
225.21 Definitions.
225.22 Authority to contract.
225.23 Negotiation procedures.
225.24 Approval of agreements.

Subpart B—Oil and Gas Leases.

- 225.30 Scope.
225.31 Procedure for awarding leases.
225.32 Duration of leases.
225.33 Rentals; minimum royalty; production royalty on leases.
225.34 Contracts for subsurface storage of oil and gas.

Subpart C—General

- 225.40 Scope.
225.41 Authority and responsibility of Authorized Officer.
225.42 Authority and responsibility of Minerals Management Service (MMS).
225.43 Definitions.
225.44 Approval of amendments to contracts.
225.45 Geological and geophysical permits.
225.46 Removal of restrictions.
225.47 Oil and gas contracts of undivided inherited lands.
225.48 Persons signing in a representative capacity.
225.49 Economic assessments.
225.50 Environmental assessments.
225.51 Bonds.
225.52 Manner of payments.
225.53 Assignments and overriding royalties.
225.54 Restrictions on operations; work-over and shut-in applications.
225.55 Unitization, communitization and well-spacing agreements.
225.56 Inspection of premises; books and accounts.
225.57 Termination and cancellation; enforcement of orders.
225.58 Penalties.
225.59 Appeals.
225.60 Fees.
225.61 Legal review.

(92 Stat. 469, 42 U.S.C. 1966); Act of January 12, 1953 (96 Stat. 2447, 30 U.S.C. 1701).

§ 225.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian-owned oil and gas reserves. Subpart A—*Minerals Agreements* establishes the procedures for the approval of oil and gas mineral agreements entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97-382). Subpart B—*Oil and Gas Leases* contains regulations governing the procedures for the issuance of oil and gas leases on tribal or allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 24 U.S.C. 396 a) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), Subpart C *General* contains miscellaneous provisions which apply to contracts for oil and gas development under both Subparts A and B. These regulations are intended to insure that Indian owners desiring to have their oil and gas reserves developed receive, at least, fair market value for the disposition of their mineral resources; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to permit Indian oil and gas owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their oil and gas reserves.

(b) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract. All former regulations governing the development of tribal and allotted lands for oil and gas development purposes are superseded by the regulations in this part.

(c) The regulations in this part do not apply to leasing and development governed by the regulations in 25 CFR Parts 213, 214, 226, and 227.

(d) Whenever the masculine gender is used in these regulations, the text is to be construed to include the feminine gender where appropriate.

§ 225.2 Information collection. [Reserved]**Subpart A—Minerals Agreements****§ 225.20 Scope.**

The regulations in this Subpart govern the procedures for obtaining approval of minerals agreements for the exploration, development and sale of oil and gas reserves on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

§ 225.21 Definitions.

As used in this Subpart:

(a) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial, lease, contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas, or providing for the sale or disposition of production or product of oil and gas.

(b) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(c) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vien-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

§ 225.22 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement, amendment, supplement or other modification of such agreement providing for the exploration for, or extraction, processing, or other development of, oil and gas in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production of products of such oil and gas.

(b) Any Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal mineral agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 225.23 Negotiation procedures.

(a) A tribe or individual Indian owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation, and such advice, assistance and information shall be

provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following provisions:

- (1) A general statement identifying the parties to the agreement, a description of the lands involved, and the purposes of the agreement;
- (2) A statement setting forth the duration of the agreement;
- (3) Provisions setting forth the obligations of the contracting parties;
- (4) Provisions describing the methods of disposition of production;
- (5) Provisions outlining the amount and method of compensation to be paid the operator;
- (6) Provisions establishing the accounting procedures to be followed by the operator;
- (7) Provisions establishing the operating and management procedures to be followed;
- (8) Provisions establishing the operator's rights of assignment, if any;
- (9) Bond requirements;
- (10) Insurance requirements;
- (11) Provisions establishing audit procedures;
- (12) Provisions setting forth arbitration procedures;
- (13) A force majeure provision; and
- (14) Provisions describing the rights of the parties to terminate or suspend the agreement and the procedures to be followed in the event of termination or suspension.

(c) In order to avoid delays in obtaining approval of a proposed agreement the tribe should confer with the Secretary prior to formally executing the agreement and seek his advice as to whether the agreement appears to meet the requirements of § 255.24 or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, should be forwarded to the Secretary for his approval.

§ 225.24 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: (1) One hundred eighty days after submission, or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the

agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement: Provided, That the Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effect of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement by certified mail. The written findings shall include an environmental assessment which meets the requirements of § 225.50. The Secretary may include in the written findings recommendations for changes to the agreement to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 225.50) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

Privileged Proprietary Information of the (name of tribe or Indians).

(d) A minerals agreement shall be approved by the Secretary if he determines that the following conditions are met:

- (1) The minerals agreement provides a fair and reasonable remuneration, to the Indian mineral owner;
- (2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected sufficient to outweigh its benefits to the Indian mineral owner;
- (3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law,

and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) "Fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section means a return on the Indian-owned mineral:

(1) Not less than that received by non-Indian mineral owners in comparable contemporary contractual arrangements for the development of similar oil and gas resources,

(2) Not less than that received by the Federal Government in comparable contractual arrangements for the development of similar oil and gas resources, and

(3) Not less than the minimum rental and royalty payments which would be applicable to similar oil and gas resources were they Federally-owned.

(g) If a representative of the Secretary to whom authority to review proposed minerals agreements has been delegated determines that a proposed agreement should not be approved, he shall prepare a written statement of the reasons why the agreement should not be approved and forward this statement, together with the agreement, the written findings required by paragraph (d) of this section, and all other pertinent documents, to the Assistant Secretary—Indian Affairs for his decision.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred to him containing a recommendation that it be disapproved and make the final decision for the Department.

Subpart B—Oil and Gas Leases

§ 225.30 Scope.

The regulations in this subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into an oil and gas lease through competitive bidding pursuant to the Act of May 11, 1938 (25 U.S.C. 396a) which governs the leasing of tribal lands or the Act of March 3, 1906 (25 U.S.C. 396) which governs competitive leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation.

§ 225.31 Procedures for awarding leases.

(a) Competitive oil and gas leases by tribal oil and gas owners shall be

entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the Indian oil and gas owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the Indian oil and gas owner or the lease may be let through private negotiations.

(b) Indian oil and gas owners may also request the Secretary to prepare, advertise, negotiate, and/or award an oil and gas lease on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. If requested by a potential prospector or operator interested in acquiring rights to Indian-owned oil and gas, the Secretary shall promptly notify the Indian oil and gas owner thereof, and advise the owner in writing of the alternatives open to him, and that he may decline to permit any oil and gas exploration or production.

(c) When the Secretary exercises his authority to enter into leases on behalf of individual Indian oil and gas owners or when he has been requested by the Indian oil and gas owner under paragraph (b) of this section to assume the responsibility of awarding the contract, he shall offer a lease 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 oil and gas by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published 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 oil and gas owner and may, where sufficient information exists, and after consultation with the Authorized Officer, 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 lease bid by or on behalf of the Indian oil and gas owner is required. The complete text of the advertisement must be published in at least one local newspaper, and such notice must include, in addition to

aforementioned terms, the description of specific tracts to be offered.

(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 paragraph (a) of this section or if the successful bidder fails to complete the lease, or if the Indian oil and gas owner refuses to accept the highest bid, the Secretary may readvertise the lease, or if deemed advisable, and in accordance with paragraph (b) of this section, he may attempt to award a lease by private negotiations, provided that he shall not award a lease by private negotiations without the written concurrence of the oil and gas owner unless he is exercising his authority under § 225.46 of this part.

(5) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, not less than a \$25 filing fee, his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons the Secretary may grant an extension of time of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing will result either in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner, or, at the Indian oil and gas owner's option, readvertisement of the forfeited lease with the defaulting bidder required to pay any difference between his bid and the high bid received at the subsequent sale, plus the cost of the advertising for such subsequent sale. The readvertisement option must be reflected in the original advertisement to be effective.

(d) When the Indian oil and gas owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian oil and gas owner of the results of the bidding, and shall not award the lease contract to any bidder until the consent of the Indian oil and gas owner has been obtained.

§ 225.32 Duration of leases.

(a) No oil and gas lease with an Indian oil and gas owner shall exceed a term of ten years or as long thereafter as oil and gas are produced in paying quantities.

(b) Where an oil and gas lease specifies a term of years and "as long thereafter as oil and gas are produced in paying quantities" or similar phrase, the term "paying quantities" shall mean: That quantity of recovered oil and gas which produced during the fiscal year of the contract, a profit to the operator, over and above the total cost of extraction (exclusive of exploration), processing, and handling to the point of sale; all rents and royalties (exclusive of overriding royalties and production payments) paid under the contract; all salaries and expenses directly related to such extraction, processing, and handling; all taxes incident thereto, except tribal severance taxes; all depreciation on salvageable production equipment; all administrative expenses attributable to the operation; any other expenses so attributable, such as business licenses, repair of equipment, and transportation.

(c) In order to continue production in paying quantities beyond the primary term of a lease, the operator must not suspend oil and gas 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 control.

(d) At the expiration of the primary term of the oil and gas lease and at the end of each fiscal year thereafter until expiration of the lease, the operator shall present sufficiently detailed written evidence to the Indian oil and gas owner and the Secretary to demonstrate that oil and gas are being produced in paying quantities.

(e) Where an oil and gas agreement provides for a primary term of less than ten years and authorizes the lessee to commence drilling with a rig designed to go to the total proposed depth provided such drilling commences by midnight on the last day of the primary term of the lease and the lessee continues drilling with reasonable diligence until completed to production or abandoned, the lease shall continue and be in force with like effect as if a well had been completed within the primary term of said lease.

§ 225.33 Rentals; minimum royalty; production royalty on leases.

(a) An oil or gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such 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 communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16% percent 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 (whether calculated on the basis of short or actual volume) at the time of production for the major 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 Authorized Officer. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere 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, if requested by the lessor, be furnished by the lessee to the Indian mineral owner. Such gas furnished shall be received by the Indian mineral owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee and the Indian mineral owner shall pay a price therefore equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian mineral owner shall equal the highest price that could be obtained from another gas purchase, less royalty. In addition to the above payments, the Indian mineral owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian mineral owner. The acquisition and use of any such gas purchased by the Indian mineral owner shall be at the Indian mineral owner's sole risk at all times. *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 Indian mineral owner under this section may

be terminated only with the approval of the Superintendent.

§ 225.34 Contracts for subsurface storage of oil and 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 if the 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 of 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 least 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 Authorized Officer 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.

Subpart C—General

§ 225.40 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian oil and gas resources entered into pursuant to this part.

§ 225.41 Authority and responsibility of Authorized Officer.

The Authorized Officer shall 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 oil and gas owner scientific and technical information and advice; and to ascertain and record the amount of production. He shall also be responsible for reviewing and reporting to the Secretary his

recommendations concerning any proposed oil and gas agreement.

§ 225.42 Authority and responsibility of the Minerals Management Service (MMS).

The MMS, upon establishment of proper procedures, shall collect and record rentals, royalties, and other payments due under any contract entered into under the regulations in this part. These regulations include the auditing of lessee documents, reports, and payments; the disbursement of revenues collected; the development and distribution of royalty and rental regulations and guidelines; and the obtaining of lessee sales contracts and agreements and other royalty records, when requested, in order to audit product values, and processing and transportation allowances.

§ 225.43 Definitions.

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

(b) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs.

(c) "Superintendent" means the Bureau Agency Superintendent or his authorized representative having immediate jurisdiction over the oil and gas reserves covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or his authorized representative.

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

(e) "Authorized Officer" means any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

(f) "Minerals Management Service (MMS) Official" means any person authorized by law or by lawful delegation of authority in the Minerals Management Service to perform the duties described.

(g) "Indian mineral owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(h) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or

gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(i) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely, a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

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

(k) "Contract" means any lease or minerals agreement.

§ 225.44 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this Part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if he determines that the contract, as modified, meets the criteria for approval set forth in § 225.22 or § 255.31.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 225.22 or § 225.31 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 225.49 of this part, and an environmental and cultural assessment pursuant to § 225.50 of this title.

(c) The exercise of options to lease for the mining of Indian oil and gas, which options were not exercised prior to the effective date of these regulations, shall be approved by the Secretary pursuant to § 225.31 of this part if the lease meets the conditions of that section.

§ 225.45 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in an oil and gas contract entered into pursuant to this

Part may be approved by the Secretary under the following conditions:

(1) The permit must describe the area to be explored and must state the duration of the permit and the consideration to be paid the Indian mineral owner.

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract or authorize the production or removal of oil and gas;

(3)(i) The permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If a lessee or his authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(ii) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

(iii) 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.

(iv) 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 bar said person from claiming any part of such damages after the same shall have been disbursed.

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and to the Indian mineral owner when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information until such time

as the permit has expired, or as otherwise provided for in the permit.

(5) The permittee will be required to obtain the right of ingress or egress from the surface owner.

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit;

(iii) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be practicable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in an oil and gas contract entered into pursuant to this Part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of the permit.

(c) For the purposes of these regulations a "geological and geophysical permit" means a written authorization from the Indian mineral owner to conduct on-site surveys to locate oil and gas deposits on the lands included in the permit by mechanical electronic or other means.

§ 225.46 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary 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 oil and gas owner(s).

(b) 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 unrestricted oil and gas owner shall furnish to him 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 Secretary, contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement which provides that payments to the oil and gas 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 productions 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 oil and gas owner at the time and in the manner specified by the regulations in this part.

§ 225.47 Oil and gas contracts of undivided inherited lands.

(a) The Secretary may execute oil and gas contracts in behalf of unknown owners of future contingent interests and on behalf of minors without legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, some or all of them cannot be located, contracts for the development of such interests may be executed by the Secretary, provided that such interests have been offered for sale under provision of § 225.31.

(c) If the heirs include a life tenant, the contract must be accompanied by an agreement between such life tenant and the remaindermen providing for the division of the rents and royalties subject to approval of the Secretary.

(d) The Secretary may approve a contract where less than 100 percent of the undivided mineral interest is committed to the lease and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) 51 percent or more of the undivided mineral interest is committed to the lease;

(2) The operator is required to submit a certified statement containing evidence of the Indian mineral owner's refusal to consent to the lease;

(3) The operator is required to submit, and obtain the approval of the Secretary, a plan describing how the operator will account to the non-consenting mineral interest owners for all income attributable to their undivided interest.

(4) Non-consenting mineral owners receive a certified written notice that the Bureau proposes to approve a contract affecting their undivided interest without their consent within ten days from receipt of the notice.

(e) The Secretary shall provide all non-consenting mineral owners with a certified written notice that he has approved a contract affecting their undivided interest without their consent.

§ 225.48 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits oil and gas mineral agreements or assignments, bonds, or other instruments required by these regulations constitute 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 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;

(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 oil and gas owner.

(c) The Secretary may, either before or after the approval of a permit, mineral 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 oil and gas owner. Failure to furnish the requested information will be deemed sufficient cause for disapproval or cancellation of the instrument, whichever is appropriate.

225.49 Economic assessments.

(a) An economic assessment where required shall include, the following findings to the extent of their applicability to oil and gas exploration and production:

(1) Whether there are assurances in the oil and gas contract that oil and gas operations will be conducted with appropriate diligence;

(2) Whether the production royalties or other form of return on oil and gas is adequate;

(3) If a method of contracting other than the competitive bid procedure is used, whether that method clearly provided the Indian oil and gas owner with a greater share of the return on the production of his oil and gas than he might otherwise obtain through competitive bidding;

(4) Whether provisions for resolving disputes that may arise between the parties to the agreement are adequate;

(5) Whether provisions for the training and preferential employment of the local Indian labor force are adequate; and

(6) Whether the configuration of the area to be developed (the oil and gas tract) is contained in a reasonable compact body and the acreage leased does not exceed that necessary to promote the orderly development of oil and gas resources).

(b) [Reserved].

225.50 Environmental assessments.

(a) An environmental assessment shall be prepared in accordance with regulations promulgated by the Council of Environmental Quality, 40 CFR 1508.9, and the Environmental Quality Handbook, 30 BIAM Supplement 1. When it is recognized prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval the environmental assessment shall be made specifically available to the Indian oil and gas owner and to the governing body of the local Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(b) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60-63, ad 60.63,

and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a *et seq.*, the Secretary shall, prior to approval of a contract perform surveys or cause surveys to be performed of the cultural resources so as to evaluate and make a determination of the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council of Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated or the data describing the historic property preserved.

§ 225.51 Bonds.

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

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Authorized Officer and the Secretary, but in no event less than \$10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file on 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, an operator or permittee may file with the Secretary 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 by corporate surety bonds.

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

(g) In lieu of a bond required by this section, an irrevocable bank letter of credit may be submitted for the same amount as a bond.

§ 225.52 Manner of Payments.

Unless otherwise provided in an approved contract 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 minerals agreement.

§ 225.53 Assignments and overriding royalties.

(a) *Assignments.* Mineral contracts or any interest therein, may be assigned or transferred only with the approval of the Secretary. Assignments may also be made only with the approval of the Indian mineral owner if such approval is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on 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 oil and gas 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 terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary 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 oil and gas 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 Secretary 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 Secretary.

§ 225.54 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, upon application of the lessee and under such terms and conditions as he may prescribe and after obtaining the consent of any Indian mineral owner affected, if such consent is required in the contract, authorize suspension of operating and production requirements whenever it is considered that marketing facilities are inadequate or economic conditions unsatisfactory or transportation facilities unavailable. Such suspensions shall not exceed 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. 396a-g) or leases on allotted lands approved pursuant to the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 39W). Applications by operators for relief from operating and producing requirements shall be filed in triplicate with the Authorized Officer and a copy thereof filed with the Secretary. 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 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 requirements both in the primary and extended lease terms, whenever it is determined that reworking or drilling operations are in the best interest 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.

§ 225.55 Unitization, communitization and well-spacing agreements.

(a) For the purpose of conservation and proper utilization of natural resources, the Secretary may approve that contracted areas shall be subject to cooperative or unitization agreements, or communitization agreements and well-spacing, with the prior consent of the Indian mineral owner and based upon a determination that approval is in the best interests of the Indian lessor.

(b) Where consent to include his lands in unit agreements is granted by the Indian mineral owner in the contract subject to approval of the Secretary, further consent of the Indian mineral owner is not required to obtain approval of a proposed agreement.

(c) In determining whether an agreement is in the best interests of the Indian lessor a written report shall be prepared by the Secretary taking into consideration whether the long term economic effects of the agreement will be in the best interests of the Indian mineral owners, and the recommendation of the Authorized Officer for approval or disapproval based upon the engineering and the technical aspects of the agreement. The report of the Secretary shall be made available to the Indian mineral owners and the applicant.

(d) A request for approval of a proposed agreement must be accompanied by an affidavit certifying that all Indian mineral owners have been given notice that approval of an agreement is being sought.

(e) An applicant for approval of an agreement may be required to provide copies of any farmout or similar type agreements where such agreements could have bearing upon the working interests in the proposed unit.

(f) Requests for approval and documents incident to such agreements must be filed with the Secretary 90 days prior to the expiration date of the first Indian oil and gas contract in the unit.

§ 225.56 Inspection of premises; books and accounts.

(a) Operators shall agree to allow Indian mineral owners, their representatives or any authorized representatives of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk, and that books and records shall be available only during business hours, and shall further agree to keep a full and correct account of all operations

and make reports thereof, as required by the contract and regulations.

(b) Records will be provided to the Minerals Management Service in accordance with MMS regulations and guidelines. MMS will safeguard such records in accordance with appropriate laws, regulations, and guidelines.

§ 225.57 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a prospector or operator 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 mining plan, his orders or the orders of the Authorized Officer 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 by certified mail 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 Part 2 of this title shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for 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 laws, regulations, terms of the drilling plan or contract, or the orders of the Secretary or the Authorized Officer, 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 Secretary when such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the

resource or the deposit being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities, without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted. Both the cessation order and the statement of reasons for the order shall be delivered to the Indian oil and gas owner.

(d) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon him pursuant to paragraph (a) of this section, or if a permittee or operator fails to take action in accordance with the cessation order statement served upon him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The permittee or operator may, within 30 days of receipt of the notice, request a hearing at which he, the Indian oil and gas owner, the Secretary, the MMS official, and the Authorized Officer shall be entitled to present evidence. After such hearing, or after 30 days if no hearing has been requested, the Secretary may order cancellation of the contract.

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

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

§ 225.58 Penalties.

Violation of any of the terms or conditions of any contract agreement or of the regulations under this part shall subject the permittee or operator to a fine of not less than \$1,000 per day for each day of such violation or noncompliance with the orders of either the Secretary or the Authorized Officer or MMS official. Provided, that prior to the determination that a fine will be imposed as provided for in this section, the permittee or operator shall receive 30 days notice with respect to the terms of the contract or of the regulations violated and, if he so requests, may receive a hearing before the Secretary.

Payment of penalties more than 10 days after notice of final decision is given shall be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid. All penalties collected pursuant to this section shall be deposited with the Indian owners.

§ 225.59 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this title.

(b) Cessation orders issued pursuant to Section 225.56 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is

ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian oil and gas owner or upon submission of a bond deemed adequate by both the Indian oil and gas owner and the Secretary to indemnify the Indian oil and gas owner from any resulting loss or damage.

§ 225.60 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 not less than \$25.

§ 225.61 Legal review.

Whenever it is proposed to enter into an oil and gas contract by methods other than the competitive bid procedure (whether by the Secretary or by the Indian oil and gas owner), or when a contract contains provisions not appearing in an approved Bureau contract form, the contract shall be submitted to the local Field or the Regional Solicitor's Office for review for legal sufficiency prior to approval.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-18542 Filed 7-11-83; 8:45 am]

BILLING CODE 4310-02-M