

# Environmental Protection Agency

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Monday  
August 11, 1980

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## Highlights

- 53075 **Leif Erikson Day** Presidential proclamation
- 53195 **Grant Programs—Community Action Agencies** CSA is considering funding 15 grants to Community Action Agencies and invites eligible applicants to submit proposals which focus on energy planning activities recently begun or about to start in their communities; effective 8-11-80
- 53187 **Grant Programs—Environmental Protection** EPA invites public participation in revising regulations implementing municipal wastewater treatment works construction grants program; comments by 10-10-80
- 53382 **Grant Programs—Environmental Protection** EPA sets forth policy and procedures for implementing municipal wastewater treatment works construction grants limitations; effective 8-11-80 (Part VII of this issue)
- 53412 **Museum Services** ED/MSI issues final regulations implementing Government in the Sunshine Act and establishes rules for the award of grants to museums; effective 8-11-80 (2 documents) (Part XI of this issue)

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Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

#### Comments Invited

Interested parties may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. All communications received on or before August 14, 1980, will be considered before action is taken on the proposed amendment. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

#### Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace & Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, New York 11430, or by calling (212) 995-3391.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

#### The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a Broadway, N.J., Transition Area. The VORTAC is at present overlaid by a 1200-foot area which will be lowered to 700 feet.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. Amend Section 71.181 of Part 71, Federal Aviation Regulations by designating a 700-foot transition area at Broadway, New Jersey as follows:

"Broadway, N.J.

"That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Broadway, New Jersey VORTAC". (Sec. 307(a) of the Federal Aviation Act of 1958 [2 Stat. 749; 49 U.S.C. 1348(a)] and of

Section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)]; and 14 CFR 11.65)

**NOTE.**—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on July 22, 1980.

Murray E. Smith,  
*Director, Eastern Region.*

[FR Doc. 80-24024 Filed 8-8-80; 8:45 am]  
BILLING CODE 4910-13-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### 22 CFR Ch. II

#### Improving Government Regulations; Semiannual Agenda of Regulations

**AGENCY:** Agency for International Development.

**ACTION:** Publication of semiannual agenda of regulations under review.

**SUMMARY:** This notice contains the 1980 second half semiannual schedule of existing AID regulations to be reviewed by the Agency. The list is published pursuant to Section 2(a) of Executive Order 12044.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Ellis, Room 113, SA-8, Office of Management Planning, Agency for International Development, Washington, D.C. Telephone (202) 235-2386.

#### SEMIANNUAL AGENDA OF REGULATIONS:

This agenda of regulations under review by AID is published semiannually pursuant to Section 2(a) of Executive Order 12044. The following regulations are under review:

1. The Regulations governing the registration of agencies for voluntary foreign aid (22 CFR Part 203) are being revised, specifically the definition of Private Voluntary Organizations (PVOs) and the conditions for their registration. A notice will be published in the Federal Register for public comment. Inquiry regarding the regulations on PVO registration may be directed to: Robert S. McClusky, Chief, Public Liaison Division, Bureau for Private and Development Cooperation, Agency for

International Development, Washington, D.C. 20523, Telephone (202) 235-1844.

2. Regulations governing nondiscrimination in Federally-assisted programs of A.I.D. (22 CFR Part 209) are being revised. It was so announced in the February semiannual agenda. The review period is being extended into the second half of 1980. Inquiries regarding these Regulations may be directed to: Kenneth E. Fries, Office of the General Counsel, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-8218.

3. Regulations governing the collection of civil claims by the Agency for International Development (22 CFR Part 213) are being reviewed. Inquiry regarding these Regulations may be directed to: Bruce K. Birnberg, Chief, Accounting Systems, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-0162.

4. Regulations covering the implementation of the Privacy Act of 1974 (22 CFR Part 215) are being reviewed. Inquiry regarding these Regulations may be directed to: Arnold H. Dadian, Public Inquiry Staff, Office of Public Affairs, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-1850.

In accordance with the procedural steps outlined in Section 2(c) of Executive Order 12044, A.I.D. will give the public full opportunity to comment on the review and any proposed revisions to the Regulations listed above.

Dated: July 31, 1980.

D. G. MacDonald,  
*Assistant Administrator, Bureau for Program and Management Services.*

[FR Doc. 80-24112 Filed 8-8-80; 8:45 am]  
BILLING CODE 4710-02-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Parts 171, 172, 173, 177, and 182

#### Indian Mineral Development Regulations

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** Following is a new revision of proposed rules published on April 5, 1977, in 42 FR 18083, governing mineral development on Indian lands. With the exception of rules governing coal operations, 25 CFR Part 177 Subpart B, 42 FR 63395 (December 16, 1977), and revisions of rules governing oil and gas

leasing of Osage reservation lands, 25 CFR Part 183, 43 FR 8135 (February 28, 1978), the proposed rules were never promulgated as final rulemaking. There is, nevertheless, a continuing need for updated rules to govern increasing Indian mineral development. Because of the three-year interval since the last published comprehensive proposal, those proposed rules, with some substantive revisions, are being republished for further public comment.

**DATE:** Comments must be received on or before October 10, 1980.

**ADDRESS:** Send comments to Director, Office of Trust Responsibilities, Attn: Code 241, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20245.

**FOR FURTHER INFORMATION CONTACT:** Tim Vollmann or David E. Jones, Office of the Solicitor (202) 343-9331; or Tom Riggs, Bureau of Indian Affairs, (202) 343-3722.

**SUPPLEMENTARY INFORMATION:** The general outline of this proposal follows that of the proposed rules published in 1977. Numerous public comments were received and many changes have been made in response to those comments.

Like the 1977 proposal, these proposed rules would combine rules for the review and approval of mineral development contracts on both tribal and allotted lands in Part 171. Part 172 would be revoked. Oil and gas development is again proposed to be set out in a separate Part 182. As was provided in the 1977 proposal, Part 173 would be revoked. This is in acknowledgement of the fact that the Crow Tribe is now effectively subject to the same statutory authorities affecting Indian mineral development which apply to most other tribes, as a result of the Act of May 17, 1968 (82 Stat. 123).

Proposed Part 177 provides for mining and exploration plans, performance bonds, conservation, and other operational aspects of mining on Indian lands, including provisions for compliance with the National Environmental Policy Act. Subpart B will continue to deal with performance standards for coal operations subject to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1201 *et seq.*, until they are superseded by permanent program regulations promulgated by the Office of Surface Mining. The permanent rules will be designed to implement those provisions of SMCRA which began to apply to Indian lands as of February 3, 1980, as required by SMCRA Section 710(d), 30 U.S.C. § 1300(d). Coal is excluded from Part 171 on entering into contracts as well. The permanent

program regulations will cover coal contracting.

The principal authors of this proposal are Richard N. Wilson, formerly of the Bureau of Indian Affairs and now Special Assistant to the Assistant Secretary—Energy and Minerals; Tim Vollmann and David E. Jones, Office of the Solicitor; and David Baldwin, Osage Agency, Bureau of Indian Affairs, and now Chief of the Division of Energy and Minerals, BIA Office of Trust Responsibilities, in Lakewood, Colorado.

It has been determined that these proposed rules are not "significant" within the meaning of 43 CFR Part 14 because they are designed primarily to clarify existing policies and procedures governing the development of Indian-owned minerals, to eliminate out-dated regulatory requirements, and to insure compliance with current law. While some new recordkeeping and reporting requirements would be imposed by these proposed rules on mineral developers and lessees, these requirements are viewed as essentially equivalent to the level of recordkeeping which would be expected in most any mineral development venture. It has also been determined that no regulatory analysis is required in connection with this proposal.

Pursuant to the authority of section 4 of the Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d); the Act of March 3, 1909 (Stat. 783, 25 U.S.C. 396); the Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415); and the Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380), it is proposed that:

#### Parts 172 and 173 [Revoked]

1. Parts 172 and 173 of 25 CFR be revoked;
2. Part 171 of 25 CFR be revised as follows:

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

Sec.

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

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. 380); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 937, 25 U.S.C. 476 and 477).

#### § 171.1 Purpose and scope.

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

(b) The regulations of the United States Geological Survey published in 30 CFR Part 231, are applicable to contracts governed by this part, except for coal, where not inconsistent with the regulations in this part.

(c) The regulations in this part do not apply to leasing and mining governed by the regulations in 25 CFR Parts 174, 175, and 178.

(d) The regulations in this part shall become effective and in full force 30 days after the date of their publication in the Federal Register, and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, that 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 leasing of tribal and allotted lands for mining purposes are superseded by the regulations in this part.

#### § 171.2 Definitions.

As used in the regulations in this part:

- (a) "Bureau" means the Bureau of Indian Affairs.
- (b) "Commissioner" means the Commissioner of Indian Affairs, or his/her authorized representative.
- (c) "Contract" means any written contract or legally-binding agreement, and is not limited in its meaning to leases, permits, or licenses.
- (d) "Gas" means any fluid, either combustible or noncombustible, which is produced from a natural state from the earth and which maintains a

gaseous or rarefied state at ordinary temperature and pressure conditions.

(e) "Indian mineral owner" means:

(1) An Indian tribe, band, nation, community, group, colony, or pueblo with an organization recognized by the Secretary, or an agency or subdivision thereof; or

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

(f) "Indian-owned minerals" means:

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

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

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

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

(i) "Mining" means the science, technique and business of mineral development, including opencast, 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 250 cubic yards.

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

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

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

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

prospect or explore for Indian-owned minerals.

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

(o) "Superintendent" means the Bureau Agency Superintendent or his/her authorized representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office, where it shall mean the Bureau Area Director or his/her authorized representative.

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

#### § 171.3 Authority to contract.

(a) Contracts authorizing prospecting for or mining of Indian-owned minerals may be entered into by a tribal mineral owner through its governing body, by an individual Indian mineral owner, or by a group of Indian mineral owners acting jointly through an association or entity in which they all participate. All such contracts, as well as amendments thereto, shall be subject to the approval authority described in § 171.6 of this part, and shall not be valid until such approval has been secured. Indian mineral owners are encouraged to consult with the Superintendent and the Mining Supervisor during the negotiation of a mineral contract.

(b) An Indian mineral owner may at any time seek technical or other advice or assistance regarding development of Indian-owned minerals from the Superintendent, Mining Supervisor, or the representatives of other appropriate federal agencies such as the Bureau of Mines, who shall provide such advice or assistance upon request, where available resources permit.

(c) The Superintendent may himself/herself execute contracts authorizing prospecting for or mining of Indian-owned minerals on behalf of an individual Indian mineral owner only under the following circumstances:

(1) Where the individual Indian mineral owner of record is deceased and the heirs to or devisees of any interest in the minerals have not been determined;

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

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

(ii) None of the owners can be located;

(3) Where there are multiple individual Indian mineral owners in an undivided tract sought for mining or prospecting, and

(i) The tract is not in use by any of the owners, and

(ii) A majority of the ownership interests in that tract has expressed in writing a desire for development of the minerals, and

(iii) The owners, after due deliberation, are unable to reach unanimous agreement on a contract within three months after a potential operator or prospector has filed with the Superintendent an offer to contract, and the Superintendent has taken all reasonable steps to notify the owners of that offer; or

(4) Where the individual Indian mineral owner of a majority ownership interest in an Indian mineral tract is incapacitated by reason of minority, or has been determined to be mentally incompetent; *Provided*, that in all such circumstances the procedures in § 171.4(c) of this part must be followed.

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

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

(a) An Indian mineral owner may utilize the following procedures, among others, in entering into a mining or prospecting contract. A contract may be entered into through competitive bidding, negotiation, or a combination of both, and may relate to prospecting, mining, or both, subject to the restrictions of § 171.7(c) of this part.

(b) The Indian mineral owner may also request the Superintendent to undertake the preparation, advertisement, negotiation, and/or award of such a contract on his/her behalf. If so requested, the Superintendent shall undertake such a responsibility in accordance with the procedure hereinafter described in this section. If application is made to the Superintendent by a potential prospector or operator for a contract to prospect or mine Indian-owned minerals, the Superintendent shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternative open to him/her, and that he/she may decline to permit any prospecting for or mining of his/her minerals.

(c) When the Superintendent exercises his/her authority to enter into contracts of behalf of individual Indian mineral owners pursuant to § 171.3(c) of this part, or when he/she has been requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding

the contract, he/she shall offer contracts to the highest responsible qualified bidder at a public sale subject to the following procedures, unless he/she determines in accordance with § 171.7(a)(4) of this part that the highest return can be obtained on the minerals by other methods of contracting (such as negotiation):

(1) Contracts shall be advertised for a bonus consideration under sealed bids or oral auction, or a combination of both, and a notice of such advertisements shall be published at least 60 days in advance of such 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 Mining Supervisor, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Superintendent reserves the right to reject any or all bids, and that acceptance of the contract bid by or on behalf of the Indian mineral owner is required;

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

(4) If no bid is received which meets the criteria of § 171.6 of this part or if the successful bidder fails to complete the contract, or if the Indian mineral owner refuses the highest bid, the Superintendent may readvertise the contract, or if deemed advisable, he/she may attempt to award the contract by private negotiations, provided that he/she shall not award a contract by private negotiations without the written concurrence of the Indian mineral owner unless he/she is exercising his/her authority under § 171.3(c) of this part;

(5) A successful bidder must, within 30 days after notification of the bid award, remit to the Superintendent the balance of the bonus, the first year's rental, a \$25 filing fee, his/her share of the advertising costs, and file with the Superintendent all required bonds. The successful bidder shall also file the contract in completed form at that time. However, for good and explicit reasons the Superintendent may grant an extension of time of up to 30 days for filing of the contract. Failure on the part of the bidder to comply with the foregoing will result either in forfeiture of the required initial 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 defaulting bidder required to pay any difference between his/her 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 mineral owner has requested the Superintendent to offer a contract to the highest responsible qualified bidder in accordance with subsection (c) of this section, the Superintendent shall advise the Indian mineral owner of the results of the bidding, and shall not award the contract to the successful bidder until the consent of the Indian mineral owner has been obtained.

(e) When a contract has been entered into by methods other than the competitive bid procedure (whether by the Superintendent or by the Indian mineral 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 Regional Solicitor's Office for review for legal sufficiency, prior to approval pursuant to § 171.6 of this part.

#### § 171.5 Duration of contracts.

(a) No mining contract with an Indian mineral owner shall exceed a term of ten years and as long thereafter as minerals are produced in paying quantities. All provisions in contracts governing their duration shall be measured from the date of approval pursuant to § 171.6 of this part, unless otherwise provided in the contract.

(b) Where a mining contract specifies a term of years and "as long thereafter as minerals are produced in paying quantities" or equivalent phrase, the term "paying quantities" shall mean: That quantity of recovered minerals which produces during the fiscal year of the contract 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 sale; all salaries and employee expenses incident to such extraction, processing, and handling; 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 30 days or more without the prior express written approval of the Superintendent 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 mining contract and at the end of each fiscal year thereafter until expiration of the contract, the operator shall present sufficiently detailed written evidence to the Indian mineral owner and to the Superintendent to demonstrate that minerals are being produced in paying quantities.

#### § 171.6 Approval of contracts.

(a) A prospecting contract or a mining contract shall be approved by the Superintendent if he/she determines in writing that the following conditions are met:

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

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

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

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

(b) The determination required by subsection (a) of this section shall be based on the written findings required by § 171.7(a) of this part and § 177.4 of Part 177 of this title.

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

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

(2) not less than that received by the Federal Government in comparable contemporary contractual arrangements for the development of similar federally-owned minerals, and

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

A determination of what constitutes a comparable contemporary contractual arrangement is within the sound discretion of the Commissioner.

#### § 171.7 Economic considerations.

(a) To aid in the Superintendent's consideration of the criteria in § 171.6 of this part, he/she shall prepare a written economic assessment of the contract with the assistance of the Mining Supervisor. Such assessment shall

include the following findings to the extent of their applicability to mining or prospecting:

- (1) Assurances in mining contracts that minerals will be mined with appropriate diligence;
  - (2) The availability of water in the amount needed for purposes of operations under the contract;
  - (3) The adequacy of production royalties or other form of return on the minerals considering the history and the economics of the mineral industry;
  - (4) If a method of contracting is used other than the competitive bid procedure of § 171.4(c) of this part, whether that method clearly provides the Indian mineral owner with a greater share of the return on the development of his/her minerals than he/she might otherwise obtain through competitive bidding;
  - (5) The adequacy of payment and enforcement provisions in the contract;
  - (6) Provisions for the training and preferential employment of the local Indian labor force;
  - (7) The size and shape of the area to be mined (the mineral tract shall be contained in a reasonable compact body and the acreage leased must not exceed that necessary to promote the orderly development of mineral resources); and
  - (8) the reputation of the prospector or operator for responsible and diligent development of mineral resources. Contracts shall not be entered into primarily for purposes of speculation. Information required to be included in such an assessment may be incorporated therein by reference to attached documentation. Such an assessment shall be regarded as an intra-agency memorandum, but shall be made available to the Indian mineral owner in all cases.
- (b) In all cases where the mineral estate has been severed from the surface estate, the Superintendent shall seek the counsel of the Solicitor's Office and shall then advise the Indian mineral owner in writing of any potentially adverse legal and economic consequences of such severance. At his/her discretion, the Superintendent may postpone approval of a contract until problems of severed ownership have been resolved. Prior to approval, the Superintendent shall insure that attempts have been made to provide all users and owners of the surface estate with the best practicable notice of the impending operation.
- (c) No prospecting contract which also confers mining rights or includes an exclusive option on such rights shall be approved. A prospecting permit containing a right of first refusal shall be subject to special scrutiny prior to

exercise of the approval power. If it appears that the Indian mineral owner will be able to obtain a measurably more favorable return on his/her minerals by means of a contract or contracts not containing provisions for such a right, then a prospecting contract granting such a right shall not be approved.

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

#### § 171.8 Performance bonds.

The prospector or operator shall furnish a bond to secure performance on each contract in accordance with § 177.6 of Part 177 of this title.

#### § 171.9 Approval of amendments to contracts.

(a) Amendments to or modification of contracts approved pursuant to § 171.6 of this part shall be approved by the Superintendent if the entire contract after amendment or modification meets the conditions of that section. The Superintendent shall review assessments compiled pursuant to subsection (a) of § 171.7 of this part and § 177.4 of Part 177 of this title in light of the amendment or modification, and shall revise such assessments, when appropriate.

(b) An amendment to or modification 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 Superintendent if the entire contract meets the conditions of § 171.6 of this part. When appropriate, the Superintendent shall prepare a written economic assessment of the amendment or modification pursuant to subsection (a) of § 171.7 of this part, and an environmental assessment pursuant to § 177.4 of Part 177 of this title. Whenever an amendment or modification of a contract increases the acreage covered by the contract, a written economic assessment of the amendment or modification shall be required.

(c) The exercise of preference rights or options to contract for the mining of Indian-owned minerals, which options or rights were conferred but not exercised prior to the effective date of these regulations, shall be approved by the Superintendent pursuant to § 171.6 of this part if the contract meets the conditions of that section.

(d) Amendments and modifications to contracts for the prospecting or the mining of Indian-owned minerals shall not be approved by the Superintendent without the consent of the Indian mineral owner, except in the circumstances prescribed by § 171.3(c) of this part.

#### § 171.10 Responsibilities.

(a) The Mining Supervisor shall be responsible for advising the Superintendent, the tribal mineral owner, and, upon request, individual Indian mineral owners regarding development and conservation of Indian mineral resources. He/she is also responsible for all geologic, engineering, and economic value determinations incident to contracts for the development of Indian-owned minerals, including ascertaining and recording the amount and value of production, and determining and recording rental, royalties, or other economic returns due and paid.

(b) The Mining Supervisor shall investigate all claims of the Indian mineral owner regarding the failure of a prospector or an operator to comply with the provisions of this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, or the orders of the Mining Supervisor.

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

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

(e) When an approved contract provides for authority on the part of the Indian mineral owner for overseeing the development of mineral reserves or other natural resources, the Superintendent and the Mining

Supervisor shall take all steps necessary to insure that the Indian mineral owner is involved in such development in accordance with the terms of the contract.

**§ 171.11 Recordkeeping and inspection.**

(a) The operator shall maintain records of all mining operations done under contract, including information on the type, grade, or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept available for examination and reproduction by the Superintendent and the Mining Supervisor. Requests for inspection of such records by Indian mineral owners shall be approved by the Superintendent at his/her discretion.

(b) All records maintained under subsection (a), all records regarding the financial structure of the operator, and any other records which are pertinent or related to operations done under contract shall at all times be available for audit purposes upon the request of the Superintendent. When an independent audit is requested by the Superintendent, he/she may require that the cost thereof be borne by the operator.

(c) This section shall not be construed to restrict an Indian mineral owner's right under contract to examine or reproduce any records relating to development under the contract.

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

**§ 171.12 Assignments; overriding royalties.**

(a) No assignment or sublease of any interest in a contract under this part shall be effective without the approval of the Indian mineral owner and the Superintendent pursuant to and subject to the criteria of § 171.6 of this part. Such approval shall not relieve the assignor of his/her obligations under the original contract. However, the Superintendent, with the consent of the Indian mineral owner, may release the assignor of his/her obligations under the contract, or may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee. A merger by operation of law or a corporate name change shall not be considered an assignment requiring approval.

(b) Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Superintendent 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/her contract and the regulations in this part and Part 177 of this title, including the requirement of Department approval prior to abandonment.

**§ 171.13 Unitization.**

(a) If the Indian mineral contract provides for unitization, the development and production requirements of the contract may be modified upon application of the operator to the Superintendent, so that production from a part of the lands within a logical mining unit satisfies the development and production requirements of all Indian mineral contracts within the unit. The Mining Supervisor must first determine that the reserves sought to be included constitute a logical mining unit. Upon designation of the logical mining unit, the Superintendent may modify the requirements governing diligent development, continued operation, and production in paying quantities as to any of the Indian mineral contracts within the unit. The rental and royalty payments obligations of all Indian mineral contracts within a unit may also be combined, and advance royalties paid on any Indian mineral contract in that unit may be credited against those combined royalties.

(b) If the Indian contract has no provision for unitization, then the Superintendent may approve an application by the operator or lessee as under paragraph (a).

(c) If the Indian mineral contracts provides for unitization but only with the consent or agreement of the Indian owners, then the consent or the agreement of the Indian owners must first be obtained by the operator before the application in paragraph (a) may be made. If there are multiple Indian mineral owners for any one contract covering lands sought to be included within a logical mining unit, the consent of agreement of a majority of owners in each contract shall be sufficient to pool those interests in the unit. The minority interests will not be included in the unit. However, if, with the respect to multiple individual Indian-owned lands within a proposed unit, any of the circumstances provided for the Superintendent executing contracts in § 171.3(c) are present, then the Superintendent may commit those interests to the unit. The

minority interests not included in a unit will be entitled to a proportion of the royalty during the term of the lease covering those lands when mining occurs thereon.

**§ 171.14 Enforcement of orders.**

(a) If the Superintendent determines—

(1) 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/her orders, or the orders of the Mining Supervisor, and

(2) That 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, he/she shall serve a notice of noncompliance upon the prospector or operator by delivery in person or mailed to him/her at his/her last known address. Copies of said notice shall be sent to the Indian mineral owner and the Mining Supervisor. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Superintendent, unless he/she has initiated a timely appeal pursuant to § 171.15 of this part, shall be grounds for suspension of operations by the Superintendent, or grounds for the initiation of action for cancellation of the 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 Superintendent of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Superintendent when such noncompliance has been corrected.

(c) If, in the judgment of the Superintendent, a prospector 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 contract, the requirements of an approved exploration or mining plan, his/her orders, or the orders of the Mining Supervisor, and

(2) Which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources,

the Superintendent shall order the immediate cessation of such activities, without prior notice of noncompliance. The Superintendent shall, however, as soon after issuance of the cessation order as possible, serve on the prospector 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 the reasons for the order shall be delivered to the Indian mineral owner.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon him/her pursuant to subsection (a), or if a prospector or operator fails to take action in accordance with the cessation order statement served upon him/her pursuant to subsection (c), the Superintendent may issue a notice of cancellation of the contract, specifying the basis for cancellation. The prospector or operator may, within 30 days of issuance of the notice, request a hearing at which he/she, the Indian mineral owner, the Superintendent, and the Mining Supervisor shall be entitled to present evidence. After such hearing, or after 30 days if no hearing has been requested, the Superintendent 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 mineral owner or other means for the resolution of disputes as set forth in the contract or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Mining Supervisor under 30 CFR § 231.73. However, another, when feasible, before taking any enforcement actions. Nor is any provision in this part intended to supersede the Secretary's enforcement authority under Subpart B of Part 177 of this title, relating to Indian coal development.

#### § 171.15 Penalties.

Violation of any of the terms or conditions of any contract or of the regulations under this part shall subject the prospector 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 Superintendent or the Mining Supervisor. *Provided*, that prior to the determination that a fine will be imposed as provided for in this section, the prospector or operator shall receive a 30-day notice with respect to the terms of the contract or of the regulations violated and, if he/she so requests, may receive a hearing before the Superintendent. Payment of penalties

not received within 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.

3. Part 177 of 25 CFR is proposed to be revised as follows:

### PART 177—OPERATION, RECLAMATION, AND CONSERVATION OF INDIAN MINERAL LANDS

#### Subpart A—General Provisions

##### Sec.

177.1 Purpose.

177.2 Scope.

177.3 Definitions.

177.4 Environmental assessment; cultural resources compliance.

177.5 Approval of exploration and mining plans.

177.6 Performance bonds.

177.7 Responsibilities.

177.8 Reports; cessation of operations.

177.9 Enforcement; appeals.

177.10 Waiver.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 853; 42 U.S.C. 4332).

#### Subpart A—General Provisions

##### § 177.1 Purpose.

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

##### § 177.2 Scope.

(a) The regulations in this subpart are applicable to contracts governing operations for the discovery, development, mining, and onsite processing of Indian-owned minerals except for oil, gas and coal.

(b) The regulations of the United States Geological Survey published in 30 CFR Part 231, are applicable to contracts governed by this subpart where not inconsistent with the regulations in this subpart.

(c) Contracts approved prior to the effective date of the regulations in this subpart shall not be subject to the requirements of this subpart, unless a

contract provides otherwise, except that:

(i) Such contracts shall continue to be subject to all regulations in effect on the date of approval of those contracts;

(ii) The requirements of § 177.5 shall apply to exploration and mining plans which had not been approved before the effective date of these regulations.

#### § 177.3 Definitions.

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

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

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

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

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

(e) "Reclamation" means the processes of land, air, vegetation, and water treatment that restrict and control harmful effects on the environment resulting from mining operations and restore the affected area to a stable condition capable of supporting the uses established prior to commencement of such operations, or an equal or better use which has been identified in an approved exploration or mining plan under this part.

(f) "Refuse" means solid or liquid waste material produced by an operation and any other waste having no further use on the affected area.

(g) "Revegetation" means planting and other measures taken to support stable vegetative growth suitable to the approved post disturbance land use for the surface of the affected area.

**§ 177.4 Environmental assessment; cultural resources compliance.**

(a) To aid in the Superintendent's consideration of the environmental consequences of a contract, pursuant to § 171.6(a)(2) of Part 171 of this title or other provision governing approval of contracts for the mining of or prospecting for minerals other than oil and gas, and to determine whether preparation of an environmental impact statement is required by section 102(2)(C) of the National Environmental Policy Act of 1969, the Superintendent shall prepare a written environmental assessment of the contract.

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

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

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

(3) The effect on air quality;

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

(5) Land uses both before and after operations;

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

(7) Measures designed to guarantee health and safety;

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

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

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

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

(iii) Noise and esthetics; and

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

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

Such an assessment shall be prepared in accordance with regulations promulgated by the Council on 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 mineral 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.

(c) 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, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, the Superintendent 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 Superintendent shall seek the comment 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 Superintendent shall ensure that the properties will either be avoided, the effects mitigated or the data preserved.

**§ 177.5 Approval of exploration and mining plans.**

(a) Before conducting any operation other than casual use, the prospector or operator shall submit to the Superintendent for his/her approval an exploration or mining plan. Upon receipt of such a plan, the Superintendent shall immediately transmit the plan to the Mining Supervisor. Prior to any such approval the Superintendent shall consult with, and obtain the concurrence of the Mining Supervisor. With respect to plans for the exploration or mining of tribally-owned minerals, the concurrence of the tribal mineral owner must also be obtained prior to approval. Such plans shall be consistent with and responsive to the requirements of the underlying contract, and shall demonstrate that reclamation of the affected area is an integral part of the planned operations and that it will progress in accordance with all applicable performance standards. The

details of the reclamation aspects of the plan shall be based upon the advice of technically trained personnel experienced in the type of reclamation to be undertaken. The Superintendent shall at all times be available to consult with individual Indian mineral owners before acting to approve any plan concerning their minerals.

(b) Prior to approval of a plan pursuant to this section, the Superintendent shall prepare an environmental assessment in accordance with § 177.4 of this part, and also comply with § 177.4(c) concerning cultural resources.

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

(d) The plan required by subsection (a) of this section shall include:

(1) Accurate and up-to-date maps of the area to be affected by the operation, drawn to a scale acceptable to the Mining Supervisor, and showing roads, dwellings, utilities, fences, and the topographic, cultural and drainage features of the area;

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

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

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

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

topography, vegetative cover, soil, foundation and water characteristics;

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

(7) A planting and revegetation program calculated to restore the native vegetation to the affected area, where possible, or in the alternative to provide a nonnative vegetative cover consistent with approved post-operation land uses; such a program shall provide for soil stabilization and preservation prior to revegetation and shall show proposed methods of preparation and fertilization of the soil and proposed methods of planting;

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

(9) A list of the names and addresses of supervisory personnel employed by the prospector or operator and responsible for the planned activities under the contract; this list shall be kept up-to-date during the life of the operation;

(10) With regard to coal mining operations, any other information which is deemed necessary for compliance with applicable provisions of the Surface Mining Control and Reclamation Act and Indian lands regulations promulgated pursuant thereto;

(11) A detailed description of the methods to be used to grade, backfill, and contour, if necessary, the affected area, and to isolate and dispose of acid and toxic materials and other spoils; and

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

(e) After the plan is approved, it shall be attached to the contract, and shall be made a part thereof. The prospector or operator, and all subcontractors shall conform all their operations to the terms of the plan.

(f) Upon a request of the Indian mineral owner or the prospector or operator, or on his/her own initiative, the Superintendent may at any time direct that a plan be reasonably revised or supplemented to adjust to changed conditions or to correct oversights. If

the prospector or operator seeks to change an approved plan, he/she shall submit the proposed revision and the justification therefore in writing to the Superintendent and to the Mining Supervisor. Before acting to approve any revised plan, the Superintendent shall obtain the concurrence of the Mining Supervisor. The Superintendent shall at all times during the consideration of a revised plan be available to consult with the Indian mineral owner.

(g) If development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot be determined except during the progress of the operations, the Superintendent may, with the concurrence of the Mining Supervisor, approve a partial plan and permit commencement of the operation under such partial plan. A partial plan shall include all information required by subsection (c) of this section and other applicable regulations to the extent that such information is available. Before approval of a partial plan may be secured, the prospector or operator must demonstrate to the Superintendent that the data or information necessary to complete the plan could not reasonably be obtained, and provide the Superintendent with adequate assurances that such data or information will be collected with due diligence during the progress of the operation, and that when sufficient data or information has been obtained, a complete plan will be promptly submitted for approval. If it appears to the Superintendent that a prospector or operator has failed to abide by such assurances, he/she shall inform the Mining Supervisor and the Indian mineral owner. The Superintendent may then order operations suspended in accordance with enforcement procedures provided by § 171.13 or the terms of the contract.

#### § 177.6 Performance bonds.

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

In determining the amount of the bond, consideration shall be given to the required rental and royalty payments under the contract, and to the character and nature of the reclamation requirements and the estimated cost of reclamation in the event that the prospector or operator forfeits his/her performance bond.

(b) Liability under the bond shall be for the duration of the prospecting or mining operations and for the period of five years thereafter. The Superintendent and the Mining Supervisor may, after consultation with the Indian mineral owner, permit complete or partial release of the bond prior to the expiration of five years after the cessation of operations, in accordance with § 177.8 of this subpart.

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

(d) In lieu of a bond, a bank letter of credit may be submitted for the same amount as a bond.

#### § 177.7 Responsibilities.

The responsibilities stated in § 171.10 of Part 171 of this title are applicable to the provisions of this subpart.

#### § 177.8 Reports, cessation of operations.

(a) Upon completion or suspension of prospecting operations, and as provided in the prospecting contract, a prospector shall submit to the Superintendent and to the Mining Supervisor, signed copies of all records, and geologic data of all prospecting operations conducted on the subject lands, including all calculations of recoverable mineral reserves, maps showing all prospecting activities, and any other data or maps revealing the mineral composition of the subject lands and the accessibility of the minerals.

(b) Within 60 days after the end of each calendar year, and within 90 days after the cessation of operations, the prospector or operator shall submit a report to the Superintendent and the Mining Supervisor containing the following information:

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

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

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

(4) The latest statistics on the employment of the local Indian labor force on the operation, including data on hiring, firing, and resignations in each job classification;

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

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

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

Such reports shall be sent to a tribal mineral owner, and shall be provided to individual Indian mineral owners upon request. Such reports shall be regarded as privileged and confidential trade secrets or commercial or financial information within the meaning of section 552(b)(4) of Title 5 of the U.S. Code.

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

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

(1) Identify the contract;

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

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

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

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

(6) Describe the weather conditions (precipitation, temperature, wind)

preceding, during, and following vegetation, as these may have affected revegetation;

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

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

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

(e) Not less than 60 days prior to cessation or abandonment of operations, the prospector or operator shall report to the Mining Supervisor and the Superintendent, who shall advise the Indian mineral owner, of his/her intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his/her operations, the extent and kind of reclamation accomplished, a statement and description of the structures and other facilities that remain in the affected area, and any other relevant information. Upon receipt of such a report, the Mining Supervisor shall inspect the affected area and consult with the Superintendent and, where applicable, the tribal mineral owner, to determine whether operations have been carried out in accordance with the terms of the contract. Individual Indian mineral owners shall also be consulted, where practicable. Operations may not be abandoned without the approval of the Mining Supervisor.

#### § 177.9 Enforcement; appeals.

(a) The provisions of this subpart may be enforced as provided by § 171.13 of Part 171 of this title, or 30 CFR Part 231. The Mining Supervisor shall promptly notify the Superintendent of violations or impending violations of the provisions of this part so that he/she may in turn notify the Indian mineral owner, and take appropriate action.

(b) Appeals shall be governed by § 171.15 of Part 171 of this title, except that appeals from decisions of the Mining Supervisor may be made pursuant to 30 CFR Part 290.

#### § 177.10 Waiver.

The Indian mineral owner may seek a waiver from any of the provisions of this part by making a written request to the Commissioner, detailing the provisions sought to be waived and the reasons therefor. The Commissioner may grant such a waiver in accordance with § 1.2 of Part 1 of this title, but the authority to waive these regulations shall not be delegated outside the immediate office of the Commissioner. Waivers may not be made by the inclusion of a waiver provision in a Federal government contract form.

4. A new Part 182 of 25 CFR is proposed to be created to read as follows:

### PART 182—OIL AND GAS CONTRACTS

#### Sec.

182.1 Purpose and scope.

182.2 Definitions.

182.3 Applicability of U.S. Geological Survey regulations.

182.4 Authority and responsibility of Oil and Gas Supervisor.

182.5 Removal of restrictions.

182.6 Geological and geophysical permits.

182.7 Application for geological or geophysical permits.

182.8 Authority to contract.

182.9 Procedures for awarding contracts and types of contracts authorized.

182.10 Duration of contracts.

182.11 Approval of contracts.

182.12 Economic considerations.

182.13 Environmental assessment.

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

182.15 Bonds.

182.16 Rentals; minimum royalty; production royalty.

182.17 Manner of payments

182.18 Inspection of premises; books and accounts.

182.19 Assignments; operating and development agreements; overriding royalties.

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

182.21 Unitization, communitization and well spacing.

182.22 Contracts for subsurface storage for oil and gas.

182.23 Termination and cancellation; enforcement of orders

182.24 Penalties.

182.25 Appeals.

182.26 Fees.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396d), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415); secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. S&E and 477); sec. 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. § 4332).

#### § 182.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian

owned oil and gas reserves. These regulations are intended to insure that Indians desiring to have their oil and gas reserves developed receive, at least, fair market value for their ownership rights; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to allow Indian oil and gas owners to enter into contracts which reserve to them the responsibility for overseeing the development of their oil and gas reserves.

(b) The regulations in this part do not apply to leasing and development governed by the regulations in 25 CFR Parts 174, 183, and 184.

(c) The regulations in this part shall become effective and in full force 30 days after the date of their publication in the Federal Register, and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, that 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 leasing of tribal and allotted lands for oil and gas development purposes are superseded by the regulations in this part.

#### § 182.2 Definitions.

As used in the regulations in this part:

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

(b) "Commissioner" means the Commissioner of Indian Affairs, United States Department of the Interior, or his/her authorized representative.

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

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

(e) "Indian oil and gas owner" means—

(1) An Indian tribe, band, nation, community, group, colony, or pueblo with an organization recognized by the Secretary, or an agency or subdivision thereof; or

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

(f) "Indian-owned oil and gas" means—

(1) Oil and/or gas, title to which is held by the United States in trust for the benefit of an Indian oil and gas owner, or

(2) Oil and/or gas in which an interest is held by an Indian oil and gas owner subject to federal restrictions against alienation or encumbrance.

(g) "individual Indian oil and gas owner" means an Indian oil and gas owner as defined in paragraph (e)(2) of this section.

(h) "Oil and Gas Supervisor" means the Area Oil and Gas supervisor, United States Geological Survey, having responsibility for the area in which the property covered by a contract under this part is located.

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

(j) "Operator" means a person, proprietorship, partnership, coporation, 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 development contract.

(k) "Secretary" means the secretary of the Interior or his/her authorized representative.

(l) "Superintendent" means the Bureau Agency Superintendent or his/her 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/her authorized representative.

(m) "Tribal oil and gas owner" means an Indian oil and gas owner as defined in paragraph (e)(1) of this section.

#### § 182.3 Applicability of Geological Survey regulations.

The regulations of the United States Geological Survey published in 30 CFR Part 221, as amended, are applicable to contracts governed by this part where not inconsistent with the regulations of this part.

#### § 182.4 Authority and responsibility of Oil and Gas Supervisor.

The Oil and Gas Supervisor is authorized and empowered to approve, supervise, and direct operations under oil and gas contracts governed by the regulations of this part; to furnish to the Superintendent and the Indian oil and gas owner scientific and technical information and advice; to ascertain and record the amount and value of production; to determine and record rentals and royalties due and paid. He/

she shall also be responsible for reviewing and reporting to the Superintendent his/her recommendations concerning any proposed oil and gas contract.

#### § 182.5 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 Department of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the 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 Superintendent until such time as the holder of the contract and the unrestricted oil and gas owner shall furnish to him/her 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 Superintendent, and the restricted portion shall continue subject to such supervision as is provided by the contract, the regulations of this part, and all other applicable laws and regulations.

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

#### § 182.6 Geological and geophysical permits.

Geological and geophysical permits may be granted by the Superintendent to search for evidence of oil and gas. Prior consent of the tribe must be obtained for geological or geophysical permits on tribal land. The consent of a majority of the ownership interests, if known, must

be obtained for individually owned land. Such permits must describe the area to be explored, and definitely state the term and the consideration to be paid. A geological or geophysical permit will not give the permittee any option or preference right to a lease or other development contract nor authorize the production or removal of oil and gas.

**§ 182.7 Application for geological or geophysical permits.**

Applications for geological or geophysical permits accompanied by a plan of the work which the applicant intends to perform may be made to the Superintendent, or to the Indian mineral owner. The Superintendent shall immediately notify the Indian mineral owner of the receipt of any such application or request.

**§ 182.8 Authority to contract.**

(a) Contracts authorizing exploration or prospecting for, or development and production of, Indian-owned oil and gas may be entered into by a tribal oil and gas owner through its governing body, by an individual Indian oil and gas owner, or by a group of Indian oil and gas owners acting jointly or through an association or entity in which they all participate. Such contracts, as well as amendments thereto, shall be subject to the approval authority described in § 182.11 of this part, and shall not be valid until such approval has been secured. Indian oil and gas owners are encouraged to consult with the Superintendent and the Oil and Gas Supervisor during the negotiation of an oil and gas contract.

(b) An Indian oil and gas owner may at any time seek technical or other advice or assistance regarding development of Indian-owned oil and gas from the Oil and Gas Supervisor, who shall provide such advice or assistance upon request consistent with his/her authority.

(c) The Superintendent may enter into contracts authorizing exploration for or development of Indian-owned oil and gas on behalf of individual Indian oil and gas owners only under the following circumstances:

(1) Where the individual Indian oil and gas owner of record is deceased and the heirs to or devisees of any oil and gas interest have not been determined; or

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

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

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

(3) Where the individual oil and gas owner or a majority ownership interest in the tract is incapacitated by reason of minority, or has been determined to be mentally incompetent; *Provided*, that the procedures in § 182.9(d) of this part must be followed.

(d) The Superintendent may not otherwise award any contracts affecting rights in Indian-owned oil and gas unless he/she has been requested in writing to do so by the Indian oil and gas owner.

**§ 182.9 Procedures for awarding contracts and types of contracts authorized.**

(a) Tribal oil and gas owners organized under section 16 of the Act of June 18, 1934 (25 U.S.C. § 476), or incorporated under section 17 of that Act (25 U.S.C. § 477), and individual Indian oil and gas owners may utilize the following procedures, among others, in entering into an oil and gas contract. A contract may be entered into through competitive bidding, negotiation, or a combination of both, and may relate to exploration or production.

(b) Oil and gas leases by tribal oil and gas owners who are not organized under section 16 of the Act of June 18, 1934 (25 U.S.C. § 476), or incorporated under section 17 of that Act (25 U.S.C. § 477), shall be entered into in accordance with the procedures of subsection (d) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Superintendent determines that it is unwise in the interest of the tribal oil and gas owner to accept the highest bid, the Superintendent may readvertise the lease for sale, subject to the consent of the tribal oil and gas owner and approval in accordance with § 182.11 of this part, or the lease may be let through private negotiations. This provision does not apply to oil and gas contracts which are not leases.

(c) Indian oil and gas owners may also request the Superintendent to undertake the preparation, advertisement, negotiation, and/or award of an oil and gas contract on his/her behalf. If so requested, the Superintendent shall undertake such responsibility in accordance with the procedures of paragraph (d) of this section and, where applicable, the provisions of subsection (b). If application is made to the Superintendent by a potential prospector or operator for a contract to develop Indian-owned oil and gas, the Superintendent shall promptly notify the Indian oil and gas owner thereof, and

advise the owner in writing of the alternatives open to him/her, and that he/she may decline to permit any oil and gas exploration or production.

(d) When the Superintendent exercises his/her authority to enter into contracts on behalf of individual Indian oil and gas owners pursuant to § 182.8(c) of this part, or where he/she has been requested by the Indian oil and gas owner under subsection (a) of this section to assume the responsibility of awarding the contract, he/she shall offer contracts to the highest responsible qualified bidder subject to the following procedures, unless he/she determines in accordance with subsection (e) of this section that the highest return can be obtained on the oil and gas by other methods of contracting (such as negotiation):

(1) Contracts 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 60 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 Oil and Gas Supervisor, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Superintendent reserves the right to reject any or all bids, and that acceptance of the contract bid by or on behalf of the Indian oil and gas owner is required.

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

(4) If no bid is received which meets the criteria of § 182.11, or if the successful bidder fails to complete the contract, or if the Indian oil and gas owner refuses to accept the highest bid, the Superintendent may readvertise the contract, or if deemed advisable, and in accordance with subsection (f) of this section, he/she may attempt to award a contract by private negotiations, provided that he/she shall not award a contract by private negotiations without the written concurrence of the oil and gas owner unless he/she is exercising his authority under § 182.8(c) of this part.

(5) A successful bidder must, within 30 days after notification of the bid

award, remit to the Superintendent the balance of the bonus, the first year's rental, a \$25 filing fee, his/her share of the advertising costs, and file with the Superintendent all required bonds. The successful bidder shall also file the contract in completed form at that time. However, for good and explicit reasons the Superintendent may grant an extension of time of up to 30 days for filing of the contract. 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/her 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.

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

(f) When a contract has been entered into by methods other than the competitive bid procedure (whether by the Superintendent 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 Regional Solicitor's Office for review for legal sufficiency, prior to approval pursuant to § 182.11 of this part.

#### § 182.10 Duration of contracts.

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

(b) Where an oil and gas contract 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 produces 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 incident 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 attributable to the operation; and any other expenses so attributable, such as business licenses, repair of equipment, and transportation.

(c) In order to continue production in paying quantities 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 Superintendent 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 contract and at the end of each fiscal year thereafter until expiration of the contract, the operator shall present sufficiently detailed written evidence to the Indian oil and gas owner and to the Superintendent to demonstrate that oil and gas are being produced in paying quantities.

(e) Where development or production contracts are for a primary term of five years or less, it may be provided in the contract that if actual drilling operations have commenced prior to the end of the primary term, and are being diligently prosecuted at the expiration of the primary term, the operator shall have the right to drill such well or wells to completion with reasonable diligence, and, if oil or gas as covered by the contract is found in paying quantities, the contract shall continue in force and effect as if such well or wells had been completed within the primary term.

#### § 182.11 Approval of contracts.

(a) An oil and gas contract shall be approved by the Superintendent if he/she determines in writing that the following conditions are met:

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

(2) The contract does not have adverse cultural or environmental consequences to the Indian lands and community affected sufficient to outweigh its benefits to the Indian oil and gas owner;

(3) The contract 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.

Such determinations must also be made prior to the award of any contract pursuant to § 182.9(d) of this part.

(b) The determination required by subsection (a) of this section shall be based on the written findings required by § 182.12(a) and § 182.13 of this part.

(c) "Fair and reasonable remuneration" within the meaning of paragraph (a)(1) of this section means a return on the Indian-owned oil and gas:

(1) not less than that received by non-Indian oil and gas owners in comparable contemporary contractual arrangements for the development of oil and gas;

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

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

A determination of what constitutes a comparable contemporary contractual arrangement is within the sound discretion of the Commissioner.

#### § 182.12 Economic considerations.

(a) To aid in the Superintendent's consideration of the criteria in § 182.11 of this part, he/she shall prepare a written economic assessment of the contract with the assistance of the Oil and Gas Supervisor. Such assessment shall include the following findings to the extent of their applicability to oil and gas exploration or production:

(1) Assurances in oil and gas contracts that oil and gas operations will be conducted with appropriate diligence;

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

(3) The adequacy of production royalties or other form of return on oil and gas;

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

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

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

(7) The size and shape of the area to be developed (the oil and gas tract shall be contained in a reasonable compact body and the acreage leased must not exceed that necessary to promote the orderly development of oil and gas resources); and

(8) The reputation of the prospector or operator for responsible and diligent development of oil and gas resources. Contracts shall not be entered into primarily for purposes of speculation. Information required to be included in such an assessment may be incorporated therein by reference to attached documentation. Such an assessment shall be regarded as an intra-agency memorandum, but shall be made available to the Indian oil and gas owner in all cases.

(b) In all cases where the mineral estate has been severed from the surface estate, the Superintendent shall seek the counsel of the Solicitor's Office and shall then advise the Indian oil and gas owner in writing of any potentially adverse legal and economic consequences of such severance. At his/her discretion, the Superintendent may postpone approval of a contract until problems of severed ownership have been resolved. Prior to approval, the Superintendent shall insure that attempts have been made to provide all users and owners of the surface estate with the best practicable notice of the impending operation.

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

#### § 182.13 Environmental assessment.

(a) To aid in the Superintendent's consideration of the environmental consequences of a contract or contracts, pursuant to § 182.11(a)(2) of this part or other provision governing approval of contracts for exploration or production of oil and gas, and to determine whether preparation of an environmental impact statement is required by § 102(2)(C) of the National Environmental Policy Act of 1969, and the Council on Environmental Quality regulations, 40 CFR Parts 1500-1508, he/she shall prepare a written environmental assessment of the contract(s). When the contract(s) is to be awarded by competitive bidding, the assessment shall be prepared prior to the advertisement.

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

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

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

(3) The effect on air quality;

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

(5) Land uses both before and after operations;

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

(7) Measures designed to guarantee health and safety;

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

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

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

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

(iii) Noise and esthetics; and

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

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

(c) 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 and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. § 469a-1 *et seq.*, the Superintendent 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 Superintendent 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 Superintendent shall ensure that the properties will either be avoided, the effects mitigated or the data preserved.

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

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, contracts or assignments, bonds, or their 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; and

(2) That it has power to conduct all business and operations as described in the instrument; and

(3) Such other information as the Superintendent may require in the exercise of his/her trust responsibility to the Indian oil and gas owner.

(c) The Superintendent may, either before or after the approval of a permit, contract, assignment, or bond, call for any additional information necessary to carry out the regulations in this part, other applicable laws and regulations and his/her 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.

#### § 182.15 Bonds.

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

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Oil and Gas Supervisor and the approving official, 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 one bond for \$50,000 for all oil and gas contracts in any one state, or such lesser jurisdiction, as determined by the Secretary, including contracts on that part of an Indian reservation extending into states contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under subsections (a), (b), and (c) of this section, an operator or permittee may file with the Commissioner, 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 the amount of bonds in his/her discretion.

(g) In lieu of a bond, a bank letter of credit may be submitted for the same amount as a bond.

**§ 182.16 Rentals; minimum royalty; production royalty.**

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

(b) If the royalty of 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 the participating acreage.

(c) Unless otherwise provided by the Secretary (or his/her authorized representative prior to the offering of land for oil and gas leases), a royalty of not less than 25 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 at the time of production for a significant portion of the oil of the same gravity, gas, and/or natural gasoline, and/or all other

hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less than the content of foreign substances as determined by the Oil and Gas Supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed 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, and the lessor is an Indian mineral owner, 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 purchaser, 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.

**§ 182.17 Manner of payments.**

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

statement for each lease under which royalties are paid.

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

**§ 182.18 Inspection of premises; books and accounts.**

Operators shall agree to allow Indian mineral owners, their representatives or any authorized 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 contracts and regulations.

**§ 182.19 Assignments; operating and development agreements; overriding royalties.**

(a) *Assignments.* Contracts hereafter approved, or any interest therein, may be assigned or transferred only with the approval of the Secretary. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof. An operator must assign either his/her 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 Superintendent within 30 days after the date of the execution by all parties.

(b) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an assignment. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such

agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of the operator with the Indian oil and gas owner under his/her contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to subsection (a) of this section. An agreement creating overriding royalties or payments out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

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

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

(b) The Secretary may, under such terms and conditions as he/she may prescribe and after obtaining the consent of any Indian mineral owner affected, authorize suspension of operating and producing requirements whenever it is considered that marketing facilities are inadequate or economic conditions unsatisfactory or transportation facilities unavailable. Such suspensions shall not extend beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a-g). Applications by operators for relief from operating and producing requirements shall be filed in triplicate in the office of the Supervisor and a copy thereof filed with the Superintendent. Complete information must be furnished showing the necessity for such relief. Suspension of operations and production shall not relieve the operator from the obligations of continued payment of annual rental or 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; *Provided*, that concurrent with initial execution of the contract, the Indian oil and gas owner may, in his/her

discretion, waive his/her right of consent to an approval of any subsequent suspension of operations heretofore mentioned.

(c) The Secretary may, after obtaining the consent of any Indian mineral owner affected, and under such terms and conditions as he/she may prescribe, authorize suspension of operating and producing requirements whenever it is determined that reworking or drilling operations is 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 subsection shall not relieve the operator from liability for the payment of rental and minimum royalty or other contract payments due under the terms of the contract.

**§ 182.21 Unitization, communitization and well-spacing.**

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

(b) Any acreage not participating in a communitized or unitized area shall be released to the Indian mineral owner(s) at the end of the primary term of the lease.

**§ 182.22 Contracts for subsurface storage of oil or gas.**

(a) The Superintendent may approve, subject to obtaining the prior consent of the Indian mineral owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such storage fee or rental, or in lieu thereof, for a royalty or percentage payment other than that

prescribed in the oil and gas production contract when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary may approve, subject to obtaining the prior consent 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 Oil and Gas Supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for approval of the Secretary to permit retention of five copies by the Department after approval.

**§ 182.23 Termination and cancellation, enforcement of orders.**

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

(b) If the Superintendent determines—

(1) that a permittee 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 drilling plan, his/her orders or the orders of the Oil and Gas Supervisor, and

(2) such noncompliance does not threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; he/she shall serve a notice of noncompliance upon the permittee or operator by delivery in person or mailed to him/her at his/her last known address. Copies of said notice shall be sent to the Indian oil and gas owner and the Oil and Gas Supervisor. Failure of the permittee or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Superintendent, or to

initiate an appeal pursuant to § 182.25 of this part, shall be grounds for suspension of operations by the Superintendent, or grounds for the initiation of action for cancellation of the contract and forfeiture of any compliance bonds.

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

(d) If, in the judgment of the Superintendent, 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 contract, the requirements of an approved exploration or drilling plan, his/her orders or the orders of the Oil and Gas Supervisor, 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 Superintendent shall order the immediate cessation of such activities, without prior notice of noncompliance. The Superintendent 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 the reasons for the order shall be delivered to the Indian oil and gas owner.

(e) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon him/her pursuant to subsection (b), or if a permittee or operator fails to take action in accordance with the cessation order statement served upon him/her pursuant to subsection (d), the Superintendent may issue a notice of cancellation of the contract, specifying the basis for the cancellation. The permittee or operator may, within 30 days of issuance of the notice, request a hearing at which he/she, the Indian oil and gas owner, the Superintendent, and the Oil and Gas Supervisor shall be entitled to present evidence. After such hearing, or after 30 days if no hearing

has been requested, the Superintendent may order cancellation of the contract.

(f) 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 contract or otherwise available at law.

(g) Nothing in this section is intended to supersede the independent authority of the Oil and Gas Supervisor under 30 CFR Part 221. However, the Oil and Gas Supervisor and the Superintendent should consult with one another, when feasible, before taking any enforcement actions.

#### § 182.24 Penalties.

Violation of any of the terms or conditions of any contract 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 Superintendent or the Oil and Gas Supervisor: *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/she so requests, may receive a hearing before the Superintendent. 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.

#### § 182.25 Appeals.

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

(b) Cessation orders issued pursuant to Section 182.23(d) 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 Superintendent to indemnify the Indian oil and gas owner from any resulting loss or damage.

#### § 182.26 Fees.

Unless otherwise authorized by the Superintendent, each permit, lease, sublease, or other contract, or

assignment or surrender thereof, shall be accompanied by a filing fee of \$25.

Thomas W. Fredericks,  
*Assistant Secretary—Indian Affairs.*

August 6, 1980.

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### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Ch. VII

#### Comments Received From Federal Agencies on the Virginia State Permanent Program Submitted Under Pub. L. 95-87

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM) U.S. Department of the Interior.

**ACTION:** Announcement of public disclosure of comments on the Virginia program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA) and other federal agencies.

**SUMMARY:** Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies, and is today announcing their public disclosure.

**ADDRESSES:** Copies of the comments received are available for public review during business hours at:

Virginia Department of Conservation and Economic Development, Division of Mined Land Reclamation, Drawer U, Big Stone Gap, Virginia 24219, Telephone: (703) 523-2925.

Office of Surface Mining Reclamation and Enforcement, 950 Kanawha Blvd., East Charleston, WV 25301, Telephone: (304) 344-2331.

Office of Surface Mining, Department of the Interior, Room No. 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4728.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Dick Leonard, Office of Surface Mining Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 342-8127.

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue N.W., Washington, D.C. 20240, Telephone: (202) 343-4225.