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Part II

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25 CFR Parts 211, 212, and 225
Leasing of Tribal Lands for Mineral
Development, Leasing of Allotted Lands
for Mineral Development, and Oil and
Gas, Geothermal and Solid Mineral
Agreements

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, 225

RIN 1076-AA82

Leasing of Tribal Lands for Mineral Development, Leasing of Allotted Lands for Mineral Development, and Oil and Gas, Geothermal and Solid Mineral Agreements

August 15, 1991.

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

SUMMARY: The Bureau of Indian Affairs (BIA) of the Department of the Interior is repropounding regulations implementing the Indian Mineral Development Act of 1982 (96 Stat. 1938, 25 U.S.C. 2102-2108) (the "1982 Act"). A new part 225 would be added to govern oil and gas, geothermal, and solid mineral development agreements entered into pursuant to the 1982 Act. In addition, the proposed rulemaking would revise existing regulations in 25 CFR parts 211 and 212 which govern mineral leasing on tribal and allotted Indian lands respectively. The intent of the proposed regulations is to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental or cultural impact on Indians resulting from such development. The regulations implementing the 1982 Act are to assist Indian mineral owners to enter into agreements which allow for more responsibility in overseeing and greater flexibility in disposing of their resources.

DATES: Comments should be submitted by February 19, 1992. Comments received or postmarked after this date may not be considered in the decision process of the final rulemaking.

ADDRESSES: Comments should be sent to: Director, Office of Trust and Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 "C" Street, NW., Mailstop 4525, Main Interior Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard N. Wilson, (303) 231-5070 or Pete C. Aguilar, (303) 231-5070 or FTS 554-5070.

SUPPLEMENTARY INFORMATION: This proposed rule is republished in the exercise of the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary-

Indian Affairs by 209 DM 8. The principal authors of this rule making are: Pete C. Aguilar, Branch of Energy and Minerals, Golden, Colorado; Sharlene Round Face, Billings Area Office, Billings, Montana; Kenneth Young, Albuquerque Area Office, Albuquerque, New Mexico; Edwin Winstead, Office of the Solicitor, Washington, DC.

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

Pursuant to the mandate in section 8 of the 1982 Act, the Bureau of Indian Affairs (BIA) published a notice of proposed rulemaking in the *Federal Register* on July 12, 1983 (48 FR 31978) intended to implement the 1982 Act. In addition, the proposed rulemaking included a revision and reorganization of regulations governing mining and oil and gas leases adopted pursuant to Act of May 11, 1938, which governs the leasing of tribally-owned minerals, and the Act of March 3, 1909, as amended, which governs the leasing of individually-owned minerals on allotted lands. On August 24, 1987 (52 FR 31918), the BIA published final regulations which were scheduled to become effective on October 24, 1987. Then, in response to concerns expressed by the public, the regulations were amended and republished as proposed on October 21, 1987 (52 FR 39332) and the public was notified that the regulations published on August 24, 1987, would not become effective.

Public responses to these publications contained reasonable and compelling arguments for restructuring the format of the proposed regulations. Several

commenters stated the regulations in the proposed format published October 21, 1987, were confusing, ambiguous and led to misinterpretation of the regulations. The proposed format combined regulations implementing the Acts of May 11, 1938, and March 3, 1909, and the 1982 Act into two separate parts—211, contracts for prospecting and mining on Indian lands (except oil and gas and geothermal) and 225, oil and gas and geothermal contracts. The most common major concern was whether provisions of the 1982 Act would serve to supplant lease and regulatory conditions contained in lease contracts entered into under the authority of the 1909 and 1938 Acts. The format created confusion about contract approval procedures used for leasing tribal versus allotted lands. In addition, the format created confusion between regulatory requirements for solid mineral versus fluid mineral contracts. The uncertainty expressed by Indian interests and industry on numerous issues convinced the Department that the regulations needed to be entirely reformatted and revised.

The proposed regulations are now organized under a system which should be more familiar to both Indian mineral owners and industry. The proposed regulations are organized in three sections: Part 211 provides the procedures for obtaining and operating standard mineral leases, for both solid and fluid minerals on tribal lands under the Act of May 11, 1938, as amended; Part 212 provides the procedures for obtaining and operating standard mineral leases, for both solid and fluid minerals on allotted lands under the Act of March 3, 1909, as amended; and Part 225 provides a new and separate section governing agreements for development of Indian minerals under the Indian Minerals Development Act of 1982.

Along with the reformatting, many changes have been made to individual sections. These changes generally reflect the Department's efforts to be responsive to the comments received in 1987, to reflect the additional experience that has been gained on several of these issues over the last four years, and, when appropriate, to make these regulations consistent with the regulations governing mineral leasing and development on federal lands. In reviewing all of the issues raised in the 1987 comments and in redrafting the regulations, it has been our goal to ensure that the Department is able to fulfill its trust responsibility by providing adequate provisions to ensure the protection of the trust resources, while at the same time benefiting the

Indian mineral owners by attempting to remove unnecessary regulatory barriers and complications which could make their minerals less attractive to industry and thus frustrate development. In addition, consistent with the United States' policy on self-determination, the Department has attempted to provide the Tribes as much freedom as possible to make their own determination on issues affecting the development of their minerals.

In order to ensure that Indian mineral owners and Indian mineral lessees have a full opportunity review and comment, the Department determined that these regulations should be published as proposed rather than final and that the public be given 60 days to review the regulations and provide written comments. In addition, the Department intends to schedule at least two public meetings in September, during which the Department will receive comments and suggestions. Notice of the time and location of these meetings will be published within the next few weeks.

Preambles often provide a detailed review of comments received and changes made pursuant to comment. However, because of the extensive reformatting and restructuring from the prior fluid/solid mineral format to the current Tribal leasing/Allotted leasing/IMDA Agreement format, a detailed review was determined to be more confusing than helpful. Because the regulations are being repropounded rather than published as final, with adequate time for complete review by the public, the Department determined to provide a short preamble listing only significant changes. Therefore, the following comments concern some, but not all the changes made to the regulations since the October 21, 1987 publication.

General Analysis

Because of the amount of time lapsed since the last publication of the proposed regulations and because the reformatting makes a side-by-side comparison extremely difficult and confusing, this current proposal is being compared to the current regulations found in 25 CFR parts 211 and 212. (Section references in the headings are to the proposed regulations.)

Section 211.1. Purpose and Scope

This is a new section which, as its title states, would provide some general guidance on the purpose and scope of the regulations. Several issues which previously were included as separate sections (i.e. 211.28 and 211.29) are now addressed in this one section.

Section 211.3. Definitions

The definitions section of the regulations would be expanded significantly to eliminate ambiguities and questions concerning the meaning of frequently used terms. The most important new definitions are:

(i) *In the best interest of the Indian mineral owner.* This term would clarify the relevant factors which may be included in the Secretary's review of leases, permits, communitization agreements, etc., and settles the issue of whether the Secretary is limited to technical functions or considerations in such approvals. This definition is consistent with the United States' trust responsibility as defined by statute;

(p) *Mining.* This definition would exclude small mining operations which extract less than 5,000 cubic yards of solid minerals per year. Although this definition does not remove the requirement that an approved lease be obtained prior to removal of any minerals, it does remove the requirement of filing mining plans, thus streamlining operations and making Indian solid minerals more competitive.

Sections 211.4, 5 and 6. Authorities of the BLM, OSMRE and MMS

These three sections would be new. Because the responsibilities for handling leases on tribal and allotted lands are shared by several agencies within this Department, these sections were added to provide references for lessors and lessees and to provide additional clarity as to what other regulations apply to Indian leases.

Section 211.7. Environmental Studies

This new section would provide guidance concerning the applicable environmental regulations and standards. It also would provide additional guidance to lessors and lessees as to what actions need to be taken prior to mineral development.

Section 211.9. Existing Permits or Leases for Minerals Issued Pursuant to 43 CFR and Acquired for Indian Tribes

This new section would clarify the procedures to be used for existing leases on lands which previously had been Federal public lands, but which are now Indian lands.

Section 211.20. Leasing Procedures

This section would amend current § 211.3 and more clearly describes for both tribes and lessees how the leasing process may be initiated.

Section 211.23. Corporate Qualifications and Requests for Information

The provisions of current § 211.5 have been found to be needlessly burdensome in the majority of cases. The new section would reduce the general information requirements while at the same time retaining the authority to require additional information should it be deemed necessary.

Section 211.24. Bonds

This revision to § 211.6 would strengthen the bonding requirements, provide additional guidance concerning personal bonds, and raise the amount of the bond required.

Section 211.27. Duration of Leases

This section would revise current § 211.10 (Term of Leases) by addressing the issue of what actions are required to propel a lease into its secondary or extended term. This amendment should protect the lessor's interests while providing lessees with additional guidance and certainty.

Section 211.28. Unitization and Communitization Agreement, and Well Spacing for Oil, Gas, and Geothermal Resources

This section would significantly expand upon the current paragraph (§ 211.21(b)) dealing with cooperative agreements. Several issues which have caused confusion and uncertainty concerning communitization of Indian leases are addressed. Because cooperative agreements are, by their very nature, almost always in the best interests of the mineral owner, the regulation is drafted to assume that no additional consent to a communitization agreement is required unless the lease specifically requires such consent. However, the Secretary must determine on a case-by-case basis whether approval of a cooperative agreement is in the Indian mineral owners best interest. Lessees would be required to submit proposed communitization agreements to the Department at least 90 days prior to the expiration date of the first Indian lease to expire in the area to be subject to the agreement.

Section 211.40. Manner of Payments

This new section would clarify that all payments, except bonus payments and rentals received prior to production, are to be paid to the MMS under its regulations.

Section 211.41. Rentals and Production Royalty on Oil and Gas Leases

This section would be simplified by referencing MMS regulations on value

issues. The section also raises the minimum royalty from 12½ to 16%. However, if a lower royalty rate would be in the best interests of the Indian mineral owner, the BIA has authority to approve leases with lower royalty rates.

Section 211.43. Royalty Rates for Minerals Other Than Oil and Gas

This new section would provide, for the first time, minimum royalty rates for minerals other than oil and gas. This new section should be helpful in providing additional guidance to potential lessees while providing reasonable royalty rates for lessors.

Section 211.44. Suspension of Operations

This provision would clarify the Department's position on suspension of operations. The Department believes that suspension of operations and production for remedial work on a well or mine to enhance or sustain gas production, to prevent damage to the mineral resource, or to prevent environmental damage is not only appropriate, but is also required as part of the lessee's implied covenants in the mineral lease. Failure to allow such suspensions without risk of lease termination would encourage irresponsible and possibly destructive behavior by lessees which are not ultimately in the best interests of the Indian owner. However, the lessee must use reasonable diligence during the period of suspension and must comply with the BLM procedures in 43 CFR.

Applications for suspensions for economic reasons would not be approved. However, the lessor and lessee may agree in writing to such a suspension which, if approved by the Secretary, would amend the lease and would not cause the termination of the lease.

Section 211.47. Diligence, Drainage and Prevention of Waste

The section was simply redrafted with minor changes to the provisions of current § 211.19 for purposes of clarity.

Section 211.51. Surrender of Leases

This section would provide more specific guidance for lessees and would provide additional protection for lessors on procedures for surrendering a lease than is provided in current § 211.27(b).

Section 211.52. Fees

This amendment to § 211.25 would increase the fees for filing transactional documents from \$10.00 to \$75.00.

Section 211.53. Assignments, Overriding Royalties, and Operating Agreements

This section would amend and simplify the provisions of current § 211.26. The most significant change is the proviso in § 211.53(b) which requires that no interest in the minerals can be assigned in an overriding royalty or operating agreement. If such overriding royalty or operating agreements assign an interest in the mineral resources then, under the Indian mineral leasing statutes, the approval of the Secretary is required.

Section 211.54. Lease or Permit Cancellation, Notice of Noncompliance

The cancellation section would be expanded to clarify the actions which may be taken by the Assistant Secretary in the event the lessee breaches or fails to fulfill its obligations under the lease or regulations. The amendments also would provide additional due process for lessees and describes the procedures to be used for cancellation in greater detail.

Section 211.55. Civil Penalties

The proposed section raises the penalty which may be imposed from \$500 to \$1,000 and clarifies the procedures for issuing a penalty.

Section 211.56. Geological and Geophysical Permits

The proposed revisions to this section provide greater guidance on issues raised by permit holders and provide that the data collected under the permit will be given to the Secretary and to the tribe. Section 212.56 provides a mechanism whereby a permit to explore can be given on allotted lands with less than 100 percent owner consent. The Department believed this provision to be appropriate since a permit under this section does not allow development of the minerals, but only the opportunity to learn more about the location and value of mineral resources.

All of the changes under part 212 concerning leasing of allotted lands are substantially similar to the revisions to part 211. Therefore, no additional analysis of part 212 is provided.

Part 225—Oil and Gas, Geothermal, and Solid Mineral Agreements

Part 225 concerning Indian Mineral Development Act agreements is an entirely new part. However, this proposal is substantially similar to previously published versions of the proposed regulations.

Section 225.1 Purpose and Scope

The scope and purpose of this section would be to implement the 1982 Act

which provides Indian Tribes greater flexibility for the development and sale of their mineral resources. The objective of the 1982 Act is to permit Indian mineral owners to enter into agreements which allow for more responsibility in overseeing and greater flexibility in disposing of their mineral resources. Because of the wide range of agreements which tribes and industry may negotiate, the Department has attempted to draft regulations which (1) fully implement the statutory procedures prescribed for obtaining an agreement for development of Indian minerals, (2) provide sufficient guidance to both tribes and lessees as to what information will be required for the Secretary's review of agreements, and what type of criteria will be applied to the review, and (3) how the agreement will be monitored by the Department to ensure that the tribes' resources are protected. Many of the provisions in the regulations apply, unless the parties to the agreement specifically agree otherwise. The amendments would allow the parties to negotiate these issues and spell out how they intend to address these issues in the agreement. Very few of the specific regulatory provisions are mandatory. However, most of the sections address issues which need to be addressed in an agreement in some fashion. Although the Department would not intend to dictate the terms of an agreement, it does believe that agreements which fail to address important issues and which may expose the tribes to an unreasonable amount of risk may need to be amended prior to approval.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the locations identified in the ADDRESSES section of this document.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export

markets; and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

This proposed rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The changes made by the proposed rulemaking reduce the regulatory burden imposed on such persons in several instances. The proposed rulemaking does increase the filing fee which must accompany each permit, lease, sublease or other contract, or an assignment or surrender thereof from \$10 to \$75 to conform with present filing fees on Federal lands. This increase is necessary to partially compensate the United States for its costs of processing those documents, but is not an amount that should discourage or prevent any small business from contracting to engage in mineral development on Indian lands. Additionally, statewide bond coverage would be increased to \$75,000 in order to provide uniformity throughout the Bureau. The \$75,000 statewide bond coverage is already required by the Bureau on three major oil and gas producing reservations. The increase should not discourage or prevent any small business from contracting to engage in mineral development on Indian lands.

The changes made by the proposed rulemaking are for the purpose of streamlining and updating existing leasing procedures, and clarifying the meaning and intent of those procedures. These changes constitute an administrative action and do not impact on the physical environment. The approval of contracts would require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in the initially proposed rulemaking which were made, the Bureau considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by initially proposed rulemaking. The Department of the Interior has determined therefore, that there will be no significant impact to the human environment.

The Office of Management and Budget (OMB) has informed the Department of the Interior that the information collections contained in 25 CFR parts 211, 212, and part 225 need not be reviewed by them under the Paperwork

Reduction Act, Public Law 95-511 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 25 CFR Parts 211, 212, 225

Geothermal energy, Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 211, 212, and 225 of title 25, Chapter I of the Code of Federal Regulations are proposed to be revised as set forth below.

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

Subpart A—General

Sec.

- 211.1 Purpose and scope.
- 211.2 Information collection.
- 211.3 Definitions.
- 211.4 Authority and responsibility of the Bureau of Land Management (BLM).
- 211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).
- 211.6 Authority and responsibility of the Minerals Management Service (MMS).
- 211.7 Environmental studies.
- 211.8 Government employees cannot acquire leases.
- 211.9 Existing permits or leases on minerals issued pursuant to 43 CFR and acquired for Indian Tribes.

Subpart B—How to Acquire Leases

- 211.20 Leasing procedures.
- 211.21 [Reserved]
- 211.22 Leases for subsurface storage of oil or gas.
- 211.23 Corporate qualifications and requests for information.
- 211.24 Bonds.
- 211.25 Acreage limitation.
- 211.26 [Reserved]
- 211.27 Duration of leases.
- 211.28 Unitization and communitization agreements, and well spacing requirements for oil, gas, and geothermal resources.

Subpart C—Rents, Royalties, Cancellations and Appeals.

- 211.40 Manner of payments.
- 211.41 Rentals and production royalty on oil and gas leases.
- 211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.
- 211.43 Royalty rates for minerals other than oil and gas.
- 211.44 Suspension of operations.
- 211.45 [Reserved]
- 211.46 Inspection of premises, books and accounts.
- 211.47 Diligence, drainage and prevention of waste.
- 211.48 Permission to start operations.
- 211.49 Restrictions on operations.
- 211.50 [Reserved]
- 211.51 Surrender of leases.
- 211.52 Fees.

- 211.53 Assignments, overriding royalties, and operating agreements.
- 211.54 Lease or permit cancellation; notice of noncompliance.
- 211.55 Civil penalties.
- 211.56 Geological and geophysical permits.
- 211.57 Forms.
- 211.58 Appeals.

Authority: Sec. 4, Act of May 11, 1938, (52 Stat. 347); Act of August 1, 1956 (70 Stat. 774); 25 U.S.C. 396a-g.

Subpart A—General

§ 211.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of Indian tribal oil and gas, geothermal, and solid mineral resources. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental or cultural impact on Indians resulting from such development. The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 211.4, 211.5, and 211.6 are supplemental to these regulations, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other regulations.

(b) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR parts 213 (Five Civilized Tribes of Oklahoma), 226 (Osage), and 227 (Wind River Reservation).

(c) Nothing in these regulations is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(d) The regulations in this part are subject to amendment at any time by the Secretary of the Interior. No regulations which become effective after the date of approval of any lease shall operate to affect the duration of the lease, rate of royalty, rental, or acreage unless agreed to by all parties to the lease.

§ 211.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in this part 211 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501; *et seq.*)

§ 211.3 Definitions.

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

Approving Official means the Bureau of Indian Affairs official with delegated authority to approve a lease.

Area Director means the Bureau of Indian Affairs official in charge of an Area Office.

Assistant Secretary means the Assistant Secretary of Indian Affairs, Department of the Interior, or his/her designee.

Authorized Officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3260, 3480 and 3590.

Bureau means the Bureau of Indian Affairs (BIA).

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

- (1) All products of geothermal processes, embracing indigenous steam, hot water and hot brines;
- (2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;
- (3) Heat or other associated energy found in geothermal formations; and
- (4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Bureau in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Bureau may consider any relevant factor, including, but not limited to, economic considerations such as date of lease expiration, probable financial effect on the Indian owner, leasability of land concerned, need for change in the terms of the existing lease, marketability and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo community, rancheria, colony, or

other group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

Indian mineral owner means an Indian tribe, band, nation, pueblo community, rancheria, colony, or other group which owns mineral interests in oil and gas, geothermal or solid mineral resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

Lease means any contract, profit-sharing arrangement, joint venture, or other agreement approved by the United States under the Act of May 11, 1938 (52 Stat. 347) or the Act of August 1, 1956 (70 Stat. 774) as amended, that authorizes exploration for, extraction of, or removal of any minerals.

Lessee means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with, or entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner.

Minerals includes both metalliferous and non-metalliferous minerals, all hydrocarbons including oil, gas, and coal, geothermal resources, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

Minerals Management Service Official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapter A.

Mining means the science, technique, and business of mineral development including, but not limited to, opencast, underground work, and in-situ leaching, directed to severance and treatment of minerals, provided when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Secretary means the Secretary of the Interior or an authorized representative.

Solid Minerals means all minerals excluding oil and gas or geothermal resources.

Superintendent means the Bureau Agency Superintendent or a designated representative authorized by law or lawful delegation of authority having jurisdiction over the oil and gas, geothermal or solid mineral resources subject to leasing under this part.

Tar sand means any consolidated or unconsolidated rock (other than coal, oil shale or gilsonite) that either: (1) Contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and produced by mining or quarrying.

§ 211.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These authorities, as amended, apply to leases affecting Indian lands.

§ 211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). These responsibilities are found in 30 CFR part 750 and 25 CFR part 216. These authorities, as amended, apply to leases affecting Indian lands.

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

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II. These authorities, as amended, apply to leases affecting Indian lands.

§ 211.7 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council

for Environmental Quality (CEQ) 40 CFR parts 1500-1508.

(b) In order to make a determination of the effect of a contract or lease 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.*, and the American Indian Religious Freedom Act of August 8, 1978 (Pub. L. 95-341), the Secretary shall, prior to approval of a lease, ensure that surveys are performed to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure either that the properties will be avoided, the effects mitigated, or the appropriate excavations or other research is conducted and that complete data describing the historic property is preserved.

§ 211.8 Government employees cannot acquire leases.

Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

§ 211.9 Existing permits or leases for minerals issued pursuant to 43 CFR and acquired for Indian tribes.

(a) Title to the minerals underlying certain Federal lands, which were previously subject to general leasing and mining laws, is now held in trust by the United States for Indian tribes. Existing mineral prospecting permits, exploration and mining leases on these lands issued pursuant to 43 CFR (and its predecessor regulations) and all actions on the permits and leases shall be administered by the Secretary in accordance with the regulations set forth in 30 CFR and 43 CFR, as applicable, provided that all payment or reports required by a non-producing lease or permit, issued pursuant to 43 CFR, shall be made to the Superintendent having administrative

jurisdiction over the land involved, instead of the officer of the Bureau of Land Management designated in 43 CFR unless specifically stated otherwise in the statutes authorizing the United States to hold the land in trust for an Indian tribe. Producing lease payments and reports will be submitted to the Minerals Management Service in accordance with 30 CFR chapter II.

(b) If any administrative action is taken by the Assistant Secretary regarding an existing lease or permit under this section, any appeal of such action shall be taken pursuant to 25 CFR part 2.

Subpart B—How To Acquire Leases

§ 211.20 Leasing procedures.

(a) Application for leases shall be made to the Superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request that the Secretary prepare and advertise or negotiate mineral leases on their behalf. If requested by a potential lessee interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner, and advise the owner in writing of the alternatives available, including the right to decline to lease. If the Indian mineral owner decides to have the leases advertised, the Secretary may undertake the responsibility to advertise and lease in accordance with the following procedures:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least 30 days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency mailing list. Individuals and companies interested in receiving advertisements of lease sales should send their mailing information to the Bureau for future reference.

(2) The advertisement shall offer the tracts to the responsible bidder offering the highest bonus. The rental and royalty rates shall be stated in the advertisement and shall not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that

acceptance of the lease bid by the Indian mineral owner is required.

(3) Each sealed 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 shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$75 filing fee, and its prorated share of the advertising costs as determined by the Bureau, and shall file with the Secretary all required bonds.

The successful bidder shall also file the lease in completed form at that time. However, for good reasons, the Secretary may grant extensions of time in 30 day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original 30 days or the previously granted extension. Failure on the part of the bidder to comply with the foregoing may result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for the approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may re-advertise the lease for sale, or, subject to the consent of the Indian mineral owner, the lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding and shall not approve the lease until the consent of the Indian mineral owner has been obtained.

(d) The Indian mineral owner may also submit negotiated leases to the Secretary for review and approval.

§ 211.21 [Reserved]

§ 211.22 Leases for subsurface storage of oil or gas.

(a) The Secretary, with the consent of the Indian mineral owners, may approve storage leases, or modifications, amendments, or extensions of existing leases, on trust or restricted lands to provide for the subsurface storage of oil or gas, irrespective of the lands from

which production is initially obtained. The storage lease, or modification, amendment, or extension to an existing lease, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

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

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

§ 211.23 Corporate qualifications and requests for information.

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

(b) A lessee proposing to acquire an interest in a permit or an interest in Indian owned minerals shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated.

(2) A notarized statement that it has power to conduct all business and operations as described in the lease instrument.

(c) The Secretary may, either before or after the approval of a permit, mineral lease, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

§ 211.24 Bonds.

(a) The lessee or assignee shall furnish with each lease or assignment a surety bond or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond.

(b) Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by an irrevocable letter of credit issued by a federally insured financial institution for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease. Letters of credit shall be subject to the following conditions:

(1) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(2) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the Assistant Secretary if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(3) The letter of credit shall be payable to the Bureau of Indian Affairs upon demand, in part or in full, upon receipt from the Assistant Secretary of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(1)(ii) of this section;

(4) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BIA office; and

(5) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BIA office at least 90 days prior to the originally stated or any extended expiration date.

(d) Lease bonds shall be in an amount satisfactory to the Secretary and, at a minimum, shall be for an amount sufficient to ensure compliance with all the requirements of the Authorized Officer, including complete and timely plugging of the well(s), reclamation of the lease area(s), and restoration of any lands or surface waters adversely affected by lease operations. The bonds

also shall be available, in the Secretary's discretion, to satisfy any unpaid royalty debt of the lessee or assignee to the lessor.

(e) A lessee may file a \$75,000 bond for all oil and gas or geothermal resource prospecting permits or leases in any one State, which may also include leases on that part of an Indian reservation extending into any contiguous State.

(f) A lessee may furnish a \$150,000 bond for full nationwide coverage to cover all oil and gas or geothermal resource leases or prospecting permits without geographic or acreage limitation to which the lessee or permittee is or may become a party. Nationwide bonds shall be filed for approval with the Assistant Secretary.

(g) The required amount of bonds may be increased in any particular case at the discretion of the Secretary.

(h) No lease bond can be cancelled without the written approval of the Bureau.

(i) A separate bond may be required for an administrative appeal of an order issued by the MMS pursuant to 30 CFR chapter II.

§ 211.25 Acreage limitation.

Leases are to be contained within one section and are not to exceed 640 acres.

§ 211.26 [Reserved]

§ 211.27 Duration of leases.

(a) All leases shall be for any term not to exceed a primary term of ten (10) years and shall continue as long thereafter as minerals are produced in paying quantities. Absent specific lease terms to the contrary, all provisions in leases governing their duration shall be measured from the date of approval by the Secretary.

(b) An oil and gas or geothermal resource lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term if drilling operations have commenced during the primary term ("commencement clause") shall be valid and shall hold the lease beyond the primary term if the lessee has commenced actual drilling by midnight of the last day of the primary term of the lease with a rig designed to reach the total proposed depth, and drilling is continued with reasonable diligence until the well is completed to production or abandoned. Drilling which meets the requirements of this section and occurs within a unit or communitization agreement to which the lease is communitized shall be considered as if it occurs on the leasehold itself. If there is a conflict between the commencement

clause and the habendum clause of a lease, the commencement clause will control.

(c) A solid minerals lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term if mining operations have commenced shall be valid and hold the lease beyond the primary term if the lessee has commenced actual removal of mineral materials intended for sale and upon which royalties will be paid.

§ 211.28 Unitization and communitization agreement, and well spacing for oil, gas, and geothermal resources.

(a) For the purpose of promoting conservation and efficient utilization of natural resources, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian owner. For the purposes of this section, a cooperative or other plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements which allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or communitization agreement shall not be required unless such consent is specifically required in the lease.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the Superintendent and/or Area Director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the Superintendent and/or Area Director has an address will satisfy this notice requirement.

(d) All Indian mineral owners of any right, title or interest in the oil and gas or geothermal resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the Superintendent and/or Area Director.

(e) A request for approval of a proposed cooperative agreement, and documents incident to such agreement, must be filed with the Superintendent at least ninety (90) days prior to the expiration date of the first Indian oil and gas or geothermal lease to expire in the area proposed to be covered by a cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease in the drilling unit covered by the agreement on the date approved by the Secretary or the date that first production occurs within the unit, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the Secretary.

Subpart C—Rents, Royalties, Cancellations and Appeals

§ 211.40 Manner of payments.

Unless otherwise specifically provided for in a lease, all payments shall be made to the Secretary or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II. All bonus payments, and, prior to production, rental payments, shall be made to the Bureau. Once production has been established rental and royalty payments shall be made to the MMS.

§ 211.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual minimum rental of \$1.25 per acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16½ percent of the amount or value of production removed or sold from the lease unless a lower royalty rate is determined to be in the best interest of the Indian mineral owner. Such approval may only be granted by the Area Director if the Approving Official is the Superintendent and by the Assistant Secretary if the Approving Official is the Area Director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease terms and regulations in 30 CFR chapter II.

(d) If provided for in the lease, the lessor may use gas in excess of the lessee's requirements for the development and operation of schools or other buildings belonging to the Tribe, free of charge. The installation of a

pressure regulator on the lessee's pipeline shall be required. The well and the pipeline shall be maintained by the lessee. The lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 211.42 Annual rentals and expenditures for development on leases other than oil and gas and geothermal resources.

(a) Unless otherwise authorized by the Secretary, a lease for minerals other than oil and gas and geothermal resources shall provide for a yearly development expenditure of not less than \$10 per acre. All such leases shall provide for a rental payment of not less than \$1.25 for each acre or fraction of an acre payable on or before the first day of each lease year.

(b) Within 20 days after the lease year, an itemized statement of the expenditure for development under a lease for minerals other than oil and gas and geothermal resources shall be filed in duplicate with the Superintendent. The lessee must certify the statement under oath.

§ 211.43 Royalty rates for minerals other than oil and gas.

(a) Except as provided in paragraph (b) of this section, the minimum rates for leases of minerals other than oil and gas shall be as follows:

(1) For substances other than coal, asphaltum and allied substances, a royalty rate of not less than 10 percent of the value of production removed or sold from the lease will be established at the nearest shipping point for all ores, metals, or minerals.

(2) For coal to be strip or open pit mined a royalty rate of not less than 12½ percent of the value of production removed or sold from the lease, and for coal removed from an underground mine, a royalty rate of not less than 8 percent of the value of production removed or sold from the lease.

(3) For asphaltum and allied substances, a royalty rate of not less than 12½ percent of the value of production removed and sold from the lease.

(4) For geothermal resources, a royalty rate of not less than 10 percent of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee. In addition, a rate of not more than 5 percent of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the

lessee, except that the royalty for any byproduct which is a mineral shall be governed by the appropriate paragraph of this section.

(b) A lower royalty rate may be allowed if it is determined to be in the best interest of the Indian mineral owner. Such approval may only be granted by the Area Director if the Approving Official is the Superintendent or by the Assistant Secretary—Indian Affairs, if the Approving Official is the Area Director.

§ 211.44 Suspension of operations.

(a) The Assistant Secretary may, under such terms and conditions as he/she may prescribe, authorize suspension of operations and production in the extended lease term whenever it is determined that remedial operations are necessary for continued production or for protection of the resource of the environment, provided that such remedial operations are conducted with reasonable diligence during the period of non-production according to the provisions in 43 CFR as applicable. Any such suspension shall not relieve the lessee from liability for the payment of rental and minimum royalty or other payments due under the terms of the lease.

(b) An application for permission to suspend operations or production for economic or marketing reasons on a lease capable of production after the expiration of the primary term of the lease must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of operations and production. Such application shall be treated as an amendment to the lease and shall be reviewed and approved by the Secretary as such.

§ 211.45 [Reserved]

§ 211.46 Inspection of premises, books and accounts.

Lessees shall allow Indian owners, their representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purpose of inspection and audit. Lessees shall keep a full and correct account of all operations and make reports thereof, as required by the lease and applicable regulations. Books and records shall be made available during regular business hours.

§ 211.47 Diligence, drainage and prevention of waste.

The lessee shall: (a) Exercise diligence in mining, drilling and operating wells on the leased lands while minerals

production can be secured in paying quantities;

(b) Protect the lease from drainage (if oil and gas or geothermal resources are being drained from the lease premises by a well or wells located on lands not included in the lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions to protect the interest of the Indian mineral owner of the lands, such as payment of compensatory royalty for the drainage);

(c) Carry on operations in a good and workmanlike manner in accordance with approved methods and practices;

(d) Have due regard for the prevention of waste of oil or gas or other minerals, the entrance of water through wells drilled by the lessee to other strata, to the destruction or injury of the oil or gas, other mineral deposits, or fresh water aquifers, the preservation and conservation of the property for future productive operations, and the health and safety of workmen and employees;

(e) Plug securely all wells before abandoning them to effectively shut off all water from the oil or gas-bearing strata;

(f) Not construct any well pad location within 200 feet of any house or barn without the surface owner's written consent;

(g) Carry out, at the lessee's expense, all reasonable orders and requirements of the Authorized Officer relative to prevention of waste;

(h) Bury all pipelines crossing tillable lands below plow depth unless other arrangements are made with the surface owner or tenant; and

(i) Pay the surface owner or tenant all damages, including damages to crops, buildings, and other improvements of the surface owner occasioned by the lessee's operations as determined by the Superintendent.

§ 211.48 Permission to start operations.

(a) No exploration, drilling, or mineral operations are permitted on any leased area before the effective date of the mineral lease. The effective date of the lease for this purpose shall be the date the lease is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the leased premises, in accordance with applicable rules and regulations in 30 CFR chapter II, 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notice to Lessees (NTL) issued thereunder. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary. Copies of

applicable regulations may be obtained from either the Authorized Officer or the Superintendent.

§ 211.49 Restrictions on operations.

Leases issued under the provisions of the regulations in this part shall be subject to such restrictions as to time or times for the well operations and production from any leased premises as the Secretary judges may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor.

§ 211.50 [Reserved]

§ 211.51 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) All royalties and rentals due on the date the request for termination is received must be paid;

(b) The Superintendent, after consultation with the Authorized Officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all operations on the portion of the lease surrendered have been properly reclaimed, abandoned, or conditioned, as required;

(c) If a lease has been recorded, the lessee must submit a release along with the recording information of the original lease so that, after acceptance of the release, it may be recorded;

(d) If a lessee requests to surrender an entire lease or an entire undivided portion of a lease, it must surrender the original leases, provided that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must surrender only its copy of the assignment;

(e) If the lease (or a portion thereof being surrendered) is owned in undivided interests, all lessees owning undivided interests in the lease must join in the request for surrender;

(f) No part of any advance rental shall be refunded to the lessee, nor shall any subsequent surrender or termination of a lease relieve the lessee of the obligation to pay advance rental if it became due prior to the surrender or termination;

(g) If oil and gas is being drained from the leased premises by a well or wells located on lands not included in the lease, the Secretary reserves the right, prior to acceptance of the surrender, to impose reasonable and equitable terms and conditions to protect the interests of the Indian oil and gas owners of the lands surrendered, such as payment of compensatory royalty for any drainage; and

(h) Upon expiration of the term of a solid mineral lease or when a solid mineral lease is surrendered, the lessee shall deliver to the Government the leased premises with the mine workings in good order and condition, and bondsmen will be held for such delivery in good order and condition, unless relieved by the Secretary for cause. Unless otherwise provided in the lease, the machinery necessary to operate the mine is the property of the lessee. However, it may not be removed from the property until the condition of the property has been ascertained by inspection by the Secretary or Authorized Officer to be in satisfactory condition and written permission to remove the machinery has been granted.

§ 211.52 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of \$75.

§ 211.53 Assignments, overriding royalties, and operating agreements.

(a) *Assignments.* An assignment of any mineral interest shall not be valid without the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease. The assignee must be qualified to hold such a lease under existing regulations and shall furnish a satisfactory bond pursuant to § 211.24 conditioned on the faithful performance of the covenants and conditions thereof. The lessee must assign either the entire interest in a leased area or an undivided interest in the whole lease or leased area. Assignments of stratigraphic horizons and subdivisions of the lease will not be approved. When an assignment creates an overriding royalty, the approval of the assignment is not an approval of the overriding royalty. A fully executed copy of the assignment will be filed with the Secretary immediately after the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee. Upon execution of satisfactory bonds the assignee accepts all the assignor's responsibilities and prior obligations and liabilities of the assignor (including but not limited to any underpaid royalties and rentals) under the lease along with all the conditions on the lease.

(b) *Overriding royalties and operating agreements.* Unless an interest in minerals is being assigned, approval of the Secretary shall not be required for agreements creating overriding royalties

or payments out of production, or agreements designating operators. Such agreements shall not modify any of the obligations of the lessee with the Indian mineral owner under the lease and the regulations in this part, including requirements for Secretarial approval before surrender. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. Such agreements shall be filed with the Secretary.

§ 211.54 Lease or permit cancellation; notice of noncompliance.

(a) If the Assistant Secretary determines that a permittee or lessee has failed to comply with the Indian mineral leasing laws, the regulations in this part, other applicable laws or regulations, the terms of the permit or lease, the requirements of an approved exploration, drilling or mining plan, Secretarial orders, or the orders of the Authorized Officer or the MMS, he/she may:

(1) If the permittee or lessee has failed to comply with a requirement over which the Assistant Secretary has administrative authority and responsibility, issue a notice of noncompliance specifying in what respect the permittee or lessee has failed to comply with the requirements referenced in this paragraph, and specifying what actions, if any, must be taken to correct the noncompliance; or

(2) For any failure to comply, serve a notice of proposed cancellation of the lease or permit. The notice of proposed cancellation shall set forth the reasons why lease cancellation is proposed.

(b) The notice of proposed cancellation or noncompliance shall be served upon the permittee or lessee by delivery in person or by certified mail to the permittee or lessee at its last known address. Service by certified mail shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier (both referred to as the date of service).

(c) The lessee or permittee shall have 20 days (or such longer time as specified in the notice) from the date that the notice of proposed cancellation or noncompliance is served to respond, in writing, to the BIA official actually issuing the notice.

(d) If a permittee or lessee fails to take any action that may be prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response which does not, in the discretion of the Assistant Secretary, adequately justify its actions, then the Assistant Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(e) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying its actions pursuant to a notice of noncompliance, the Assistant Secretary may issue an order of cessation. If the permittee or lessee fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (f) of this section, the Assistant Secretary may issue an order of lease cancellation.

(f) If orders of cessation or lease cancellation issued pursuant to this Section are issued by a subordinate of the Assistant Secretary, they may be appealed under 25 CFR part 2. If the order is issued by the Assistant Secretary, and not one of his subordinates, it is the final order of the Department.

(g) This section does not limit any other remedies of the Indian mineral owner as set forth in the lease or permit.

(h) Nothing in this section is intended to limit the authority of the Authorized Officer or the MMS official to take any enforcement action authorized pursuant to statute or regulation.

(i) The Authorized Officer, the MMS Official, and the Superintendent should consult with one another before taking any enforcement actions.

§ 211.55 Civil penalties.

(a) Violations of the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued by the Assistant Secretary, or in the case of solid minerals issued by the Authorized Officer, may subject a lessee or operator to a penalty of not more than \$1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the lessee or operator either personally or by certified mail to the permittee or lessee at its last known address. The date of service for a notice sent by certified mail shall be the date of receipt or five days after the date of mailing to the permittee's last known address, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the lessee or operator of his/her right to either request a hearing within 30 days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent, whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the person served with a notice of noncompliance requests a hearing, penalties shall accrue each day until the person corrects the violations set forth in the notice. The Assistant Secretary may suspend the requirement to correct the violations pending completion of the hearings provided by this section if:

(1) The Assistant Secretary determines that suspension will not be detrimental to the lessor and issues a written suspension; and

(2) The person served with the noncompliance notice submits, and the Assistant Secretary accepts, a bond adequate to indemnify the lessor for loss or damage. The amount of the bond must be sufficient to cover any disputed amounts plus accrued penalties and interest.

(e) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed shall subject the lessee or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the BIA. In the absence of a specific lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) Lessees or operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved lease. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director, or the MMS official to impose penalties for violations of applicable regulations pursuant to 43 CFR part 3160, and groups 3400 and 3500, or 30 CFR chapter II;

(2) Replacing or superseding any penalty provision in the terms and conditions of a lease approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of an additional penalty for violations of lease terms for which a penalty has already been assessed by the Authorized Officer or MMS official, or which has been abated to the satisfaction of the Authorized Officer or MMS official within the prescribed abatement period.

§ 211.56 Geological and geophysical permits.

Permits to conduct geological and geophysical operations on Indian lands

which do not conflict with any mineral leases entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(a) The permit must describe the area to be explored, the duration, and the consideration to be paid the Indian owner;

(b) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of, or removal of oil and gas, geothermal resources, or other minerals, except samples for assay and experimental purposes, unless specifically so stated in the permit;

(c) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release the data upon request.

§ 211.57 Forms.

Leases, bonds, permits, assignments, and other instruments relating to mineral leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent. The provisions of a standard lease or permit may be changed, deleted, or added to by written agreement of all parties with the approval of the Secretary.

§ 211.58 Appeals.

Appeals from decisions of Bureau of Indian Affairs officers under this part may be made pursuant to 25 CFR part 2.

PART 212—LEASING OF ALLOTTED LANDS FOR MINERAL DEVELOPMENT

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- 212.51 Surrender of leases.
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- 212.53 Assignments, overriding royalties, and operating agreements.
- 212.54 Lease or permit cancellation; notice of noncompliance.
- 212.55 Civil penalties.
- 212.56 Geological and geophysical permits.
- 212.57 Forms.
- 212.58 Appeals.

Authority: Act of March 3, 1909 (35 Stat. 783.25 U.S.C. 396 (as amended)); Act of May 11, 1938 (Sec. 2, 52 Stat. 347; 25 U.S.C. 396 b-g; Act of August 1, 1958 (70 Stat. 774)).

Subpart A—General

§ 212.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of individual Indian oil and gas, geothermal and solid mineral resources. These regulations are intended to ensure that the resources of Indian mineral owners will be developed in a manner that maximizes the owners' best economic interests and minimizes any adverse environmental or cultural impact on Indians. The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 211.4, 211.5, and 211.6 are supplemental to these regulations, and apply to parties holding leases or permits for development of

Indian mineral resources unless specifically stated otherwise in this part or in such other regulations.

(b) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR parts 213 (Five Civilized Tribes of Oklahoma), 226 (Osage), and 227 (Wind River Reservation).

(c) Nothing in these regulations is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(d) The regulations in this part are subject to amendment at any time by the Secretary of the Interior. No regulations which become effective after the date of approval of any lease shall operate to affect the duration of the lease, rate of royalty, rental, or acreage unless agreed to by all parties to the lease.

§ 212.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in this part 212 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501; *et seq.*).

§ 212.3 Definitions.

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

Approving Official means the Bureau of Indian Affairs official with delegated authority to approve a lease.

Area Director means the Bureau of Indian Affairs official in charge of an Area Office.

Assistant Secretary means the Assistant Secretary of Indian Affairs, Department of the Interior, or his/her designee.

Authorized Officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3260, 3480, and 3590.

Bureau means the Bureau of Indian Affairs.

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means: (1) All products of geothermal processes, embracing indigenous steam, hot water and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom. *In the best interest of the Indian mineral owner* refers to the standards to be applied by the Bureau in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Bureau may consider any relevant factor, including, but not limited to, economic considerations such as date of lease expiration, probable financial affect on the Indian owner, leasability of land concerned, need for change in the terms of the existing lease, marketability and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

Indian mineral owner means any individual Indian who owns mineral resources, the title to which is held in trust by the United States, or is subject to the restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract, profit-sharing arrangement, joint venture, or other agreement approved by the United States under the Act of May 11, 1938 (52 Stat. 347) or the Act of August 1, 1956 (70 Stat. 774) as amended, that authorizes exploration for, extraction of, or removal of any minerals.

Lessee means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with, or entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner.

Minerals includes both metalliferous and non-metalliferous minerals, all hydrocarbons including oil, gas, and coal, geothermal resources, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

Minerals Management Service Official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapter A.

Mining means the science, technique, and business of mineral development including, but not limited to, opencast, underground work, and in-situ leaching, directed to severance and treatment of minerals, provided when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all veintype solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Secretary means the Secretary of the Interior or an authorized representative.

Solid Minerals means all minerals excluding oil and gas or geothermal resources.

Superintendent means the Bureau Agency Superintendent or a designated representative authorized by law or lawful delegation of authority having jurisdiction over the oil and gas, geothermal or solid mineral resources subject to leasing under this part.

Tar sand means any consolidated or unconsolidated rock (other than coal, oil shale or gilsonite) that either: (1) Contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and produced by mining or quarrying.

§ 212.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR Part 3160—Onshore Oil and Gas Operations, 43 CFR Part 3260—Geothermal Resources Operations, 43 CFR Part 3480—Coal Exploration and Mining Operations, and 43 CFR Part 3590—Solid

Minerals (other than coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These authorities, as amended, apply to leases or permits affecting Indian lands and mineral resources.

§ 212.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et. seq.*). These responsibilities are found in 30 CFR part 750, and 25 CFR part 216. The authorities, as amended, apply to leases or permits affecting Indian lands.

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

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II. These authorities, as amended, apply to leases affecting Indian lands.

§ 212.7 Environmental studies.

The provisions of § 211.7 of this subchapter, as amended, are applicable to leases under this part.

§ 212.8 Government employees cannot acquire leases.

Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

Subpart B—How to Acquire Leases

§ 212.20 Leasing procedures.

(a) Application for leases shall be made to the appropriate Superintendent.

(b) Indian mineral owners may request the Secretary to prepare, advertise and negotiate mineral leases on their behalf. If requested by the Indian mineral owners, the Secretary may use the following procedure for leasing:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least 30 days in advance of sale. If applicable, the notice must identify the reservation within which the tracts to be

leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency mailing list. Individuals and companies interested in receiving advertisements on lease sales should send their mailing information to the Bureau for future reference.

(2) The advertisement shall offer the tracts to a responsible bidder offering the highest bonus. Bids shall be accepted only for bonus considerations. The rental and royalty rates shall be stated in the advertisement and will not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each sealed 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 shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$75 filing fee, its prorated share of the advertising costs as determined by the Bureau, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form, signed by the Indian mineral owner(s), at that time. However, for good reasons, the Secretary may grant extensions of time in 30 day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original 30 days or the previously granted extension. Failure on the part of the bidder to comply with the foregoing may result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may re-advertise the lease for sale, or

subject to the consent of the Indian mineral owner, the lease may be let through private negotiations.

§ 212.21 Execution of leases.

(a) The Secretary may execute a mineral lease on behalf of an Indian mineral owner only when the owner is deceased and the heirs to or devisee of the estate either have not been determined, or if determined, some or all of them cannot be located. Leases involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under the provisions of § 212.20(b)(1)-(6).

(b) The Secretary shall execute leases on behalf of minors and persons who are incompetent by reason of mental incapacity.

(c) If an owner is a life tenant, the procedures set forth in 25 CFR part 179 (Life Estates and Future Interests), shall apply.

§ 212.22 Leases for subsurface storage of oil and gas.

The provisions of § 211.22 of this subchapter, as amended, are applicable to leases under this part.

§ 212.23 Corporate qualifications and requests for information.

The provisions of § 211.23 of this subchapter, as amended, are applicable to leases under this part.

§ 212.24 Bonds.

The provisions of § 211.24 of this subchapter, as amended, are applicable to leases under this part.

§ 212.25 Acreage limitation.

The provisions of § 211.25 of this subchapter, as amended, are applicable to leases under this part.

§ 212.26 [Reserved]

§ 212.27 Duration of leases.

The provisions of § 211.27 of this subchapter, as amended, are applicable to leases under this part.

§ 212.28 Unitization and communitization agreements, and well spacing for oil, gas, and geothermal resources.

The provisions of § 211.28 of this subchapter, as amended, are applicable to leases under this part.

§ 212.29 [Reserved]

§ 212.30 Removal of restrictions.

(a) Notwithstanding the provisions of any mineral lease to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the

lease. Thereafter, all payments required to be made under the lease shall be made directly to the owner(s).

(b) In the event restrictions are removed from a part of the land included in any lease approved by the Secretary, the entire lease shall continue to be subject to the supervision of the Secretary until the holder of the lease and the unrestricted Indian owner furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from the supervision of the Secretary, the lease and all applicable laws and regulations.

§ 212.31 [Reserved]

§ 212.32 [Reserved]

§ 212.33 Terms applying after relinquishment.

All leases for individual Indian lands approved by the Secretary under this part shall contain provisions for the relinquishment of supervision and provide for operation of the lease after relinquishment. These leases shall contain provisions that address the following issues:

(a) *Provisions of relinquishment.* If the Secretary relinquishes supervision at any time during the life of a lease of all or part of the acreage subject to the lease, he/she shall give the Indian mineral owner and the lessee 30 days written notice prior to the termination of supervision. After notice of relinquishment has been given to the lessee, the lease shall be subject to the following conditions:

(1) All rentals and royalties thereafter accruing shall be paid directly to the lessor or the lessor's successors in title, or to a trustee appointed under the provisions of paragraph (b) of this section.

(2) If at the time supervision is relinquished by the Secretary the lessee shall have made all payments then due and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, the bond given to secure the performance of the lease shall be of no further force or effect.

(3) If relinquishment affects only part of a lease, the lessee may continue to conduct operations on the land covered by the lease as an entirety. In this case, the lessee shall:

(i) Pay in the manner prescribed by the lease and regulations a percentage of the rentals and royalties due equal supervision of the Secretary; and

(ii) Pay the remainder of the rentals and royalties due under the lease to the lessor, the lessor's successors in title, or the trustee, as appropriate, in accordance with paragraph (a)(1) of this section.

(b) *Division of fee.* (1) If the Secretary relinquishes supervision of a lease whose fee is divided into separate parcels held by different owners, or for which ownership of the rental or royalty interest is divided, the lessee may continue to conduct operations on the leased land as an entirety in accordance with the original terms and conditions of the lease.

(2) After the vesting of his/her title, each owner shall receive a proportion of all rental and royalties accrued. This proportion shall be one of the following, as appropriate:

(i) A percentage of all rental and royalties equal to the percentage the acreage of the fee bears to the entire acreage of the lease; or

(ii) A percentage of the rental or royalty interest equal to the percentage the rental or royalty interest of the fee bears to the entire rental or royalty interest.

(3) If there are four or more parties entitled to rentals and royalties, the lessee may withhold payment of rental and royalty fees until all of the parties agree upon and designate in a written recordable instrument a trustee to receive all payments due on their behalf.

(i) In the paragraph (b)(4) of this section, "parties entitled" refers to parties entitled either by virtue of undivided interest or by virtue of ownership of separate parcels of land covered by the lease.

(ii) the lessee may not withhold in accordance with paragraph (b)(4) of this section the portion of a rental or royalty due an Indian lessor while under restriction.

(iii) Payments to the designated trustee shall constitute lawful payments. The sole risk of improper distribution of funds by the trustee shall rest upon the parties who named the trustee and their designated successors in title.

§ 212.34 Individual tribal assignment excluded.

The reference in this part to "allottees" and "allotments" does not include assignments of tribal lands made pursuant to tribal constitutions or ordinances for the use of individual Indians and assignees of such lands.

Subpart C—Rents, Royalties, Cancellations, and Appeals

§ 212.40 Manner of payments.

The provisions of § 211.40 of this subchapter, as amended, are applicable to leases under this part.

§ 212.41 Rentals and production royalty on oil and gas leases.

(a) An oil and gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual minimum rental of \$1.25 per acre or such other greater amount as provided for in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) Leases with a royalty rate less than 16⅓ percent of the amount or value of production removed or sold from the lease shall be approved only if a lower royalty rate is determined to be in the best interest of the Indian mineral owner. Such approval may only be granted by the Area Director if the Approving Official is the Superintendent and the Assistant Secretary if the Approving Official is the Area Director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease terms and regulations in 30 CFR chapter II.

§ 212.42 Annual rentals and expenditures for development on leases other than oil and gas.

The provisions of § 211.43 of this subchapter, as amended, are applicable to leases under this part.

§ 212.43 Royalty rates for minerals other than oil and gas.

The provisions of § 211.43 of this subchapter, as amended, are applicable to leases under this part.

§ 212.44 Suspension of operations.

The provisions of § 211.44 of this subchapter, as amended, are applicable to leases under this part.

§ 212.45 [Reserved]

§ 212.46 Inspection of premises, books, and accounts.

The provisions of § 211.46 of this subchapter, as amended, are applicable to leases under this part.

§ 212.47 Diligence, drainage and prevention of waste.

The provisions of § 211.47 of this subchapter, as amended, are applicable to leases under this part.

§ 212.48 Permission to start operations.

The provisions of § 211.48 of this subchapter, as amended, are applicable to leases under this part.

§ 212.49 Restrictions on operations.

The provisions of § 211.49 of this subchapter, as amended, are applicable to leases under this part.

§ 212.50 [Reserved]**§ 212.51 Surrender of leases.**

The provisions of § 211.51 of this subchapter, as amended, are applicable to leases under this part.

§ 212.52 Fees.

The provisions of § 211.52 of this subchapter, as amended, are applicable to leases under this part.

§ 212.53 Assignments, overriding royalties, and operating agreements.

The provisions of § 211.53 of this subchapter, as amended, are applicable to leases under this part.

§ 212.54 Lease or permit cancellation; notice of noncompliance.

The provisions of § 211.54 of this subchapter, as amended, are applicable to leases under this part.

§ 212.55 Civil penalties

The provisions of § 211.55 of this subchapter, as amended, are applicable to this part.

§ 212.56 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral lease entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

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

(2) The permit may not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of or removal of oil and gas or geothermal resources, or other minerals (except samples for assay and experimental purposes), unless specifically so stated in the permit;

(3) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is

prescribed in the permit, the Secretary may, in his/her discretion, release the data upon request.

(b) A permit may be granted by the Secretary without 100 percent consent of the individual mineral owners if:

(1) The minerals are owned by more than one person, and the owners of a majority of the interest consent to the permit;

(2) The whereabouts of the owners of the minerals or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known consent to the permit; or

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

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

(c) A lessee does not need a permit to conduct geological and geophysical operations on Indian lands, if provided for in the lessee's mineral lease, where the Indian mineral owner is also the surface land owner. In instances where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant.

§ 212.57 Forms.

The provisions of § 211.57 of this subchapter, as amended, are applicable to leases under this part.

§ 212.58 Appeals.

The provisions of § 211.58 of this subchapter, as amended, are applicable to leases under this part.

PART 225—OIL AND GAS, GEOTHERMAL, AND SOLID MINERAL AGREEMENTS**Subpart A—General**

Sec.

- 225.1 Purpose and scope.
- 225.2 Information collection.
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- 225.4 Authority and responsibility of the Bureau of Land Management (BLM).
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Subpart B—Minerals Agreements

- 225.20 Authority to contract.
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- 225.34 Unitization and communitization agreements, and well spacing requirements.
- 225.35 Inspection of premises; books and accounts.
- 225.36 Agreement cancellation; notice of noncompliance.
- 225.37 Civil penalties.
- 225.38 Appeals.
- 225.39 Fees.
- 225.40 Government employees cannot acquire agreements.

Authority: 25 U.S.C. 2101 *et seq.*

Subpart A—General**§ 225.1 Purpose and scope.**

(a) The regulations in this part govern agreements for the development of Indian-owned minerals entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97-382, 25 U.S.C. 2101 *et seq.*). These regulations are intended to ensure that Indian tribes are permitted to enter into agreements which allow for more responsibility in overseeing and greater flexibility in disposing of their mineral resources, and to allow development in the manner which the tribe believes will maximize its best economic interest and minimize any adverse environmental or cultural impact resulting from such development. Pursuant to section 4 of the Act (25 U.S.C. 2101(e)), as part of this greater flexibility, the tribe bears the responsibility for any business risks which may be inherent in the agreement. If the Secretary approves an agreement in compliance with the provisions of the 1982 Act, then the United States shall not be liable for losses sustained by a tribe or individual Indian under such agreement. However, as further stated in the 1982 Act, the Secretary continues to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any agreement, and to uphold the duties of the United States as derived from the trust relationship and from any treaties, Executive orders, or agreements between the United States and any Indian tribe.

(b) The regulations in this part shall become effective and in full force on and after the date of approval, and shall be subject to amendment at any time by

the Secretary of the Interior; *Provided*, That no regulations which become effective after the date of approval of any agreement shall operate to affect the duration of the agreement, the rate of royalty or financial consideration, rental, or acreage unless agreed to by all parties to the agreement.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 211.4, 211.5, and 211.6 are supplemental to these regulations, and apply to parties holding agreements for development of Indian mineral resources unless specifically stated otherwise in this part or in such other regulations.

(d) Nothing in these regulations is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

§ 225.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in this part 225 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

§ 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated.

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

Area Director means the Bureau of Indian Affairs Official in charge of an Area Office.

Assistant Secretary means the Assistant Secretary of Indian Affairs, Department of the Interior, or his/her designee.

Authorized Officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3260, 3480 and 3590.

Bureau means the Bureau of Indian Affairs.

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

Geothermal resources means: (1) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Bureau in considering whether to take administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a minerals agreement, permit, unitization or communitization agreement) the Bureau may consider any relevant factor, including, but not limited to economic considerations such as date of lease expiration, probable financial affect on the Indian owner, leasability of land concerned, need for change in the terms of the existing lease or mineral agreement, and marketability.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

Indian mineral owner means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns mineral interest in oil and gas, geothermal or solid mineral resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns surface estate held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian tribe means any, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns lands or interests in land title to which is held in trust by the United States or is subject to a restriction

against alienation imposed by the United States.

Individual Indian means an individual Indian or Alaska Native who owns lands or interest in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Lessor means Indian mineral owner.

Minerals includes both metalliferous and non-metalliferous minerals, all hydrocarbons including oil and gas, and coal, geothermal resources, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

Minerals Management Service Official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described, in 30 CFR chapter II.

Mining means the science, technique, and business of mineral development, including, but not limited to, 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 considered "mining" only if the extraction of such mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all ventype solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Operator means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with an Indian owner with respect to, or has entered into an agreement under the authority of the Indian Mineral Development Act of 1982.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil and gas or geothermal resources.

Superintendent means the Bureau Agency Superintendent or a designated representative authorized by law or lawful delegation of authority having jurisdiction over the mineral resources covered by an agreement under this part.

Tar sand means any consolidated or unconsolidated rock (other than coal, oil

shale or gilsonite) that either: (1) Contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and produced by mining or quarrying.

§ 225.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3280—Geothermal Resources Operations, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These authorities, as amended, apply to agreements affecting Indian lands.

§ 225.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). These responsibilities are found in 30 CFR part 750 and 25 CFR part 218. These authorities, as amended, apply to agreements affecting Indian lands.

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

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II. These authorities, as amended, apply to agreements affecting Indian lands.

Subpart B—Mineral Agreements

§ 225.20 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to mineral resources in which such Indian tribe owns an interest.

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

§ 225.21 Negotiation procedures.

(a) An Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation process, and such advice, assistance and information shall be provided to the extent allowed by available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement the Indian tribe should, if applicable, address the following provisions:

(1) A general statement identifying the parties to the agreement, legal description of the lands, and the purposes of the agreement.

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

(3) A statement indemnifying the lessors and the United States from all claims, liabilities and causes of action that may arise from the agreement.

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

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

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

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

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

(9) Provisions establishing the operator's rights of assignment;

(10) Bond requirements;

(11) Insurance requirements;

(12) Provisions establishing audit procedures;

(13) Provisions for resolving disputes;

(14) A force majeure provision;

(15) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination or suspension;

(16) Provisions describing the nature and schedule of the activities to be conducted by the operator;

(17) Provisions describing to the best of the operator's knowledge, future abandonment, reclamation and restoration activities;

(18) Provisions for reporting production and sales;

(19) Provisions for unitizing or communitizing of lands included in an agreement for the purpose of promoting conservation and efficient utilization of natural resources; and

(20) Provisions for record keeping requirements.

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement, and seek

advice as to whether the agreement appears to meet the requirement of § 225.22, or whether modifications, additions, or corrections will be required in order to obtain Secretarial approval.

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

§ 225.22 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: (1) One hundred and eighty (180) days after submission or, (2) sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later.

(b) At least 30 days prior to approval or disapproval of any minerals agreement, the affected Indian mineral owners shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental study which meets the requirements of § 225.24 and an economic assessment as described in § 225.23, if needed. The Secretary shall include in the written findings any recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental study required by § 225.24) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian mineral owners. The letter containing the written findings should be headed with:

"PRIVILEGED PROPRIETARY INFORMATION OF THE (name of tribe and/or Indian mineral owners)."

(c) A minerals agreement may be approved by the Secretary if in his/her discretion he/she determines that the following conditions are met:

(1) The minerals agreement is in the best interest of the Indian mineral owner;

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

(3) The minerals agreement complies with the requirements of this Part and all other applicable regulations or the provisions of applicable Federal law.

(d) The determinations required by paragraph (c) of this section shall be based on the written findings required by paragraph (b) of this section. The question of "best interest" within the meaning of paragraph (c)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including, but not limited to, a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(e) If the Secretary believes that an agreement should not be approved, a written statement of the reasons why the agreement should not be approved shall be prepared and forwarded, together with the agreement, the written findings required by paragraph (b) of this section, and all other pertinent documents, to the Assistant Secretary for decision with a copy to the affected Indian mineral owner.

(f) The Assistant Secretary shall review any agreement referred which contains a recommendation that it be disapproved, and shall make the final decision for the Department.

§ 225.23 Economic assessments.

The Secretary shall prepare or cause to be prepared an economic assessment and shall address among other things:

(a) Whether there are assurances in the mineral agreement that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on mineral resources is adequate; and

(c) When a method of contracting for development of mineral resources other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian mineral owner with a share of the return on the production equal to what the owner might otherwise obtain through competitive bidding, when such a comparison can readily be made.

§ 225.24 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council for Environmental Quality (CEQ) 40 CFR parts 1500-1508.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, and the American Indian Religious Freedom Act (Pub. L. 95-341), the Secretary shall, prior to approval of an agreement, ensure that surveys are performed to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that either the properties will be avoided, the effects mitigated, or the data describing the historic property preserved.

§ 225.25 Resolution of disputes.

A mineral agreement shall provide a dispute resolution mechanism (e.g., binding arbitration or mediation). The Secretary shall not be made a party to the dispute resolution mechanism. The dispute resolution mechanism provided in the mineral agreement may be preempted by the Secretary if in his/her discretion he/she should take action pursuant to §§ 225.36 and 225.37 concerning cancellation and enforcement of orders and penalties.

§ 225.26 Auditing and accounting.

The Secretary may conduct audits relating to the scope, nature and extent of compliance with the agreement and with applicable regulations and orders to lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a minerals agreement. Procedures for determining net profits or lessor compensation from net profits agreements, joint venture agreements or other mineral agreement will be in accordance with the Council of Petroleum Accountant Societies

standards and guidelines unless otherwise stated in the agreement.

§ 225.27 Forms and reports.

Forms relating to mineral agreements prescribed by the Secretary may be obtained from the Superintendent. Reports required by the MMS shall be filed using the forms prescribed in 30 CFR part 210, which are available from MMS. Guidance on how to prepare and submit required information, collection reports, and forms to MMS is available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, PO Box 5760, Denver, Colorado 80217. Additional reporting requirements may be required by the Secretary.

§ 225.28 Approval of amendments to agreements.

An amendment, modification or supplement to an agreement entered into pursuant to the regulations in this part, whether the agreement was approved prior to or after the effective date of these regulations, must be approved in writing by all parties prior to being submitted for approval to the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the agreement, as modified, meets the criteria for approval set forth in § 225.22. All amendments, modifications, or supplements will be reviewed against the criteria set forth in § 225.22 to determine if any or all of the provisions in this section apply.

§ 225.29 Corporate qualifications and requests for information.

(a) The signing in a representative capacity of mineral agreements or assignments, bonds, or other instruments required by these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such a capacity. An agent for a surety shall furnish a power of attorney.

(b) An operator proposing to acquire an interest in a mineral agreement shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and a notarized statement that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated; and

(2) A notarized statement that it has power to conduct all business and operations as described in the minerals agreement.

(c) Either before or after the approval of a mineral agreement, assignment, or bond, the Secretary may call for any reasonable additional information

necessary to protect the interests of the Indian mineral owners.

§ 225.30 Bonds.

Bonding shall be in an amount and form prescribed by the Secretary, unless specified in the agreement. If a bond is required, the provisions of 25 CFR 211.24 may be used to set the amount.

§ 225.31 Manner of payments.

Unless specified otherwise in the agreement, all payments due for royalties, bonuses, rentals and other payments under a minerals agreement shall be made in accordance with the provisions of 25 CFR part 211 and 30 CFR chapter II where applicable or as mutually agreed to by the Secretary and the Indian mineral owner.

§ 225.32 Permission to start operations.

(a) No exploration, drilling, or mining operations are permitted on any Indian trust or restricted lands prior to the approval of the mineral agreement by the Secretary pursuant to the regulations in this part.

(b) Applicable permits in accordance with rules and regulations in title 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notice to Lessees (NTL) issued thereunder shall be required before actual operations are conducted on the agreement acreage. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary of the Interior. Copies of applicable regulations may be secured from either the Authorized Officer or the Superintendent.

§ 225.33 Assignments.

An assignment of a mineral agreement, or any interest therein, shall not be valid without the approval of the Secretary and the Indian mineral owners if approval of the Indian mineral owner is required in the agreement. The assignee must be qualified to hold such an agreement and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof as stipulated in the agreement. A fully executed copy of the assignment shall be filed with the Secretary immediately after the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee, and a determination that the assignor has satisfied all accrued obligations.

§ 225.34 Utilization and communitization agreements, and well spacing requirements.

The provisions of § 211.28 of this chapter are applicable to agreements under this part unless specified in the agreement.

§ 225.35 Inspection of premises; books and accounts.

(a) Operators shall allow Indian mineral owners or their authorized representatives or any authorized representatives of the Secretary to enter all parts of the agreement area for the purpose of inspection. Operators shall keep a full and correct account of all operations and make reports thereof, as required by the agreement and applicable regulations. Books and records shall be available during regular business hours.

(b) Operators will provide records to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. All records pertaining to a mineral agreement shall be maintained by an operator in accordance with 30 CFR part 212.

(c) Operators will provide records to the Authorized Officer in accordance with BLM regulations and guidelines.

§ 225.36 Agreement cancellation; notice of noncompliance.

(a) If the Assistant Secretary determines that an operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the agreement, the requirements of an approved exploration, drilling or mining plan, Secretarial orders, or the orders of the Authorized Officer or the MMS, he/she may:

(1) Issue a notice of noncompliance if the operator has failed to comply with a requirement over which the Assistant Secretary has administrative authority and responsibility; or

(2) Serve a notice of proposed cancellation of the agreement for any failure to comply. The notice of proposed cancellation shall set forth the reasons why cancellation is proposed.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the requirements referenced in paragraph (a) of this section, and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice of proposed cancellation or noncompliance shall be served upon the operator by delivery in person or by certified mail to the permittee or lessee at its last known address. The date of service for a notice sent by certified mail shall be the date

of receipt or 5 days after the date of mailing to the permittee's last known address, whichever is earlier.

(d) The operator shall have 20 days (or such longer time as specified in the notice) from the date that the notice of proposed cancellation or noncompliance is served to respond, in writing, to the BIA official actually issuing the notice.

(e) If an operator fails to take any action prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response which does not, in the discretion of the Assistant Secretary, adequately justify its failure to comply, then the Assistant Secretary may cancel the agreement, specifying the basis for the cancellation.

(f) This section does not limit any other remedies of the Indian mineral owner as set forth in the agreement.

(g) Nothing in this section is intended to limit the authority of the Authorized Officer or the MMS Official to take any enforcement action authorized pursuant to statute or regulation.

(h) The Authorized Officer, the MMS Official, and the Superintendent should consult with one another before taking any enforcement actions.

(i) If an order of cessation or agreement cancellation issued pursuant to this section is issued by a subordinate of the Assistant Secretary, it may be appealed under 25 CFR part 2. If the order is issued by the Assistant Secretary, and not one of his/her subordinates, it is the final order of the Department.

§ 225.37 Civil penalties.

The provisions of § 211.55 of this chapter, or as hereafter amended, are applicable to this part.

§ 225.38 Appeals.

Appeals from decisions of Bureau of Indian Affairs Officers under this part may be taken pursuant to 25 CFR part 2.

§ 225.39 Fees.

Unless otherwise authorized by the Secretary, each agreement, or assignment or surrender thereof, shall be accompanied by a filing fee of \$75.00.

§ 225.40 Government employees cannot acquire agreements.

Government employees are regulated by the provisions of 25 CFR part 140 and 43 CFR, part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

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