DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 225

RIN 1076–AD00

Oil and Gas, Solid Mineral, and Geothermal Minerals Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) of the Department of the Interior (Department) is promulgating regulations implementing the Indian Mineral Development Act (IMDA) of 1982 (25 U.S.C. 2102 through 2108). A new part 225 is added to govern solid-mineral, oil and gas, and geothermal minerals agreements entered into pursuant to the IMDA. The intent of these regulations is to ensure that Indian mineral owners wishing to develop their mineral resources are able to do so in a manner that maximizes their best economic interests and minimizes any adverse environmental or cultural impact. These regulations will assist Indian mineral owners entering into minerals agreements by allowing for greater responsibility, oversight, and flexibility in the control and development of their own resources.

EFFECTIVE DATE: April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Richard N. Wilson (303) 231–5070 or Pete C. Aguilar (303) 231–5070.

SUPPLEMENTARY INFORMATION: This final rule is published in the exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8. The principal authors of this final rule are: Pete C. Aguilar, Division of Energy and Mineral Resources, Golden, Colorado; Karl E. Kiehn, Office of the Solicitor, Washington, DC; and Edwin Winstead, Office of the Solicitor, Albuquerque, New Mexico.

Section 3 of the IMDA authorizes any Indian tribe to enter into joint ventures, leases, or other types of negotiated minerals 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 IMDA also permits individual Indians owning a beneficial or restricted interest in mineral resources to include their resources in a minerals 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 individual Indian mineral owner. The IMDA does not supersede the Act of May 11, 1938 (25 U.S.C. 396a), which governs the leasing of tribally-owned minerals, or the Act of March 3, 1909, as amended, (25 U.S.C. 396) which governs the mineral leasing of allotted lands. Instead, it supplements those acts by permitting Indian tribes to elect whether they wish to offer their mineral resources for lease by competitive bidding, enter into direct negotiations for a minerals agreement, or a combination of competitive bidding and negotiations.

Pursuant to section 8 of the IMDA, the BIA published a notice of proposed rulemaking in the **Federal Register** on July 12, 1983 (48 FR 31978). The proposed rulemaking included a revision and reorganization of the regulations governing mining and oil and gas leases adopted pursuant to the 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, the BIA published final regulations (52 FR 31916) 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 that the October 21, 1987 proposed regulations were confusing and ambiguous. The proposed format combined regulations implementing the Acts of May 11, 1938 and March 3, 1909, and the IMDA into two separate parts: (1) Part 211, contracts for prospecting and mining on Indian lands (except oil and gas and geothermal); and (2) Part 225, oil and gas and geothermal contracts. The most common major concern was whether provisions of the IMDA would supplant lease and regulatory conditions contained in lease contracts entered into under the authority of the 1909 and 1938 Acts. The format of the proposed rules created confusion about contract approval procedures for leasing tribal versus allotted lands. In addition, the format of the proposed rules 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 were then organized under a system which would be more familiar to both Indian mineral owners and industry. The proposed regulations were organized into three sections: (1) 25 CFR part 211 provided 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; (2) 25 CFR part 212 provided 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 (3) 25 CFR part 225 provided a new and separate section governing minerals agreements for development of Indian minerals under the IMDA.

Along with the reformatting, many changes were made to individual sections. These changes reflected the Department's efforts to be responsive to the comments received in 1987, and to include the additional business and administrative experience that had been gained on several issues during the last few years. In reviewing all of the issues raised in the 1987 comments and in redrafting the regulations, the goal of the BIA is to ensure that the Department is able to fulfill its trust responsibility by providing adequate provisions to ensure the protection of the trust resources and at the same time benefit the Indian mineral owners by removing unnecessary regulatory barriers and complications which could make their minerals less attractive to industry and thus frustrate development. In addition, consistent with the 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 provide Indian mineral owners and Indian mineral operators full opportunity to review and comment on the reformatted and rewritten regulations, the Department determined that these regulations should be published as a proposed rather than a final rule, and that the public should be given 90 days to review the regulations and provide written comments. The proposed rulemaking was published in the **Federal Register** (56 FR 58734) on November 21, 1991. The closing date for submission of review comments on the proposed rulemaking was February 19, 1992. All comments received were considered in the preparation of the final rules.

Currently, there are regulations governing the mineral leasing of Indian

lands (25 CFR parts 211 and 212 as well as the regulations of other Federal agencies), but no specific regulations govern the disposition of the resources of the Indian mineral owner pursuant to the IMDA. Further, the IMDA is and has been utilized by tribes to participate in minerals agreements since 1982 without benefit of formal implementing regulations. To immediately implement the IMDA, the Department is publishing this final rule (25 CFR part 225) separately and restructuring the remainder of the proposed rulemaking (25 CFR parts 211 and 212). In response to the wishes and comments of the Indian tribes and the public, the comment period for Parts 211 and 212 was reopened (57 FR 40298) for 60 days on September 2, 1992, and public hearings were held on September 25 in Denver, Colorado and on September 28 in Albuquerque, New Mexico. The reopened comment period closed on November 2, 1992. Parts 211 and 212 are scheduled for future publication in the **Federal Register** and will include recognition and acknowledgement of the concerns and comments received during the latest comment period which closed November 2, 1992, as well as the concerns and comments received previously.

This preamble provides a review of the comments received on the proposed 25 CFR part 225 regulations and the changes made to the proposed rule pursuant to these comments.

I. Changes Made to Proposed Rules

The proposed rule is modified: (1) In response to comments received; (2) to enable the proposed rule to stand alone as a final rule after separation from 25 CFR parts 211 and 212 of proposed rulemaking (56 FR 58734); and (3) in recognition of prevailing and customary business and administrative practices which have developed since the passage and approval of the IMDA. This final rule and new CFR part 225 has appeared in this format as a proposed rule only once in the **Federal Register** (56 FR 58734) on November 21, 1991. As a result of the decision to publish part 225 separately as a final rule, it is no longer possible to incorporate the provisions of parts 211 and 212 by reference. Rather, minor modifications are made to part 225. The necessary sections of parts 211 and 212 which were incorporated by reference in the November 21, 1991 publication of 25 CFR part 225 have now been modified as necessary to reflect the concerns of commenters and to reflect current administrative and business practices and are included directly within part 225. The salient modifications to the proposed rule are here summarized by section. The section headings refer to the final rule.

Section 225.1. Purpose and Scope

Several changes are made to this section to more clearly reflect the language used in the IMDA and to assure the Alaska native corporations that 25 CFR part 225 is applicable only to Indian mineral interests held in trust by the United States or subject to restriction against alienation imposed by the United States. In addition, a change is made to reflect current practices that permit the parties to minerals agreements, with the approval of the Secretary, to agree in negotiation to provisions which would replace some requirements contained in the regulations of the Minerals Management Service.

Section 225.3. Definitions

The definitions section of part 225 is modified somewhat, partly in response to comments and partly because part 225 requires new definitions to describe principles and procedures. For example, the term "minerals agreement" is defined, instead of the term "agreement"; this change is necessary because the numerous agreements used in minerals industries (i.e., unit agreement, communitization agreement, operating agreement, etc.) must all be specified to prevent confusion. Also, the other agreements, as described in proposed 25 CFR parts 211 and 212, are no longer incorporated by reference, so must be properly identified within 25 CFR part 225. As a result, the word "agreement" stands without modifiers only when used in the most general, non-specific sense. The necessary changes are:

Agreement, is deleted and redefined under "minerals agreement" to conform with language of the IMDA and clearly separate the minerals agreement from other agreements in common use within the minerals industry.

Assistant Secretary, is deleted and replaced by "Assistant Secretary—Indian Affairs" and modified to: (1) Recognize the statutory requirement of 25 U.S.C. 2103(d) that disapproval of minerals agreements may not be delegated lower than the Assistant Secretary—Indian Affairs; (2) clarify that all other responsibilities, except for those under the statutory requirement of 25 U.S.C. 2103(d), may be delegated by the Secretary as a matter of policy; and (3) clarify that orders of cessation or minerals agreement cancellations issued by the Secretary or the Assistant Secretary—Indian Affairs are final orders of the Department.

Assistant Secretary—Indian Affairs is added to replace the definition of "Assistant Secretary" (see above).

Bureau is deleted from definitions because this word is no longer used in the regulations.

Director's representative is added to bring OSMRE representatives formally into Part 225.

In the best interest of the Indian mineral owner is modified to clarify that the Secretary shall consider any relevant factor in making a best interest determination, and to specifically include consideration by the Secretary of potential environmental, social and cultural effects.

Lessor is deleted because this word is no longer used in these regulations.

Minerals is modified to better define the scope and description of minerals which may be disposed under a minerals agreement.

Minerals agreement is added to replace the definition of an "agreement" in proposed rulemaking.

Operator is modified to recognize that there is no operator until a minerals agreement is approved.

Secretary is modified to recognize the statutory requirement of 25 U.S.C. 2103(d) that disapproval of minerals agreements may not be delegated lower than the Assistant Secretary—Indian Affairs.

Tar sand is deleted, but now defined as a mineral and included as a result of the modification of the definition of "minerals."

Section 225.4. Authority and Responsibility of the Bureau of Land Management (BLM)

References are added to cite the BLM regulations concerning onshore oil and gas and geothermal unitization and communitization.

Section 225.6. Authority and Responsibility of the Minerals Management Service (MMS)

This section was expanded to clarify that the Secretary may consider alternative provisions in a minerals agreement with respect to the requirements found in 30 CFR chapter II, subchapters A and C, if they are reasonable and adequately address the royalty functions governed by MMS regulations.

Section 225.20. Authority To Contract

In response to comments, § 225.20 is revised to indicate that the authority to contract covers those mineral resources in which a tribe or individual Indian owns a beneficial or restricted interest.

Section 225.21. Negotiation Procedure

Paragraph 225.21(b) is modified to require that, in a minerals agreement, the Indian mineral owner shall, if applicable, address the provisions listed. Many of the provisions listed must necessarily be included in any agreement, and most must be addressed to permit the Secretary to properly discharge the trust responsibility pursuant to 25 U.S.C. 2103(e). The paragraph at § 225.21(b)(1) is expanded by adding to the phrase concerning the legal description of lands, "to include rock intervals or thickness," in the event a minerals agreement is only for a specific interval (formation) or depth. At § 225.21(b)(20), a paragraph is added to encourage the Indian mineral owner to address, during negotiation procedures, provisions for the protection of minerals agreement lands from drainage and/or unauthorized taking of mineral resources. Two paragraphs are modified to include procedures for mineral valuation and limitations on assignments of interest as items for consideration during negotiation. Other minor editorial changes are made, such as specifying in paragraph 225.21(d) that the Superintendent or Area Director are the designees of the Secretary authorized to receive the minerals agreements executed by the tribes.

Section 225.22. Approval of Minerals Agreements

Minor changes were made to clarify this provision. The statutory requirement that only the Secretary or Assistant Secretary—Indian Affairs may disapprove a minerals agreement is stated in definitions at § 225.3. Paragraph 225.22(c) was modified to clarify that minerals agreements shall be approved if the minerals agreements are in compliance with all the requirements of the IMDA. Paragraph 225.22(d) was modified to clarify that the Secretary's decision to disapprove a minerals agreement shall be deemed a final Federal agency action (25 U.S.C. 2103(d)).

Section 225.23. Economic Assessments

This section was modified to clarify that the economic assessment is mandatory pursuant to the Secretary's obligation to consider the potential return to the tribe.

Section 225.24. Environmental Studies

A change is made in this section to clarify that although compliance with all archeological and historic preservation statutes is required, the exhaustive, site-specific analyses and surveys demanded when operations begin at a specific site are not invariably required prior to approval of a minerals agreement.

Section 225.25. Resolution of Disputes

This section was rewritten, in response to comments, to clarify the Secretary's role in dispute resolution. The revised section also removes the example dispute resolution mechanisms because several commenters assumed that the examples were mandatory methods of dispute resolution. This section now more clearly states the statutory requirements that the parties to a minerals agreement provide a mechanism for resolving disputes, and that the Secretary retains the responsibility and authority to protect Indian mineral owners in the event of violation of the provisions of a minerals agreement.

Section 225.26. Auditing and Accounting

This section was modified to specify that the accounting and auditing standards applicable to the administration of minerals agreements will be the same standards currently applied by the Minerals Management Service.

Section 225.27. Forms and Reports

This section was modified to clarify that prescribed forms (if applicable) for a minerals agreement may be obtained from the Superintendent or the Area Director, and that geothermal production reports are made to the BLM on forms prescribed by the BLM that are available from the Superintendent or the Authorized Officer.

Section 225.28. Approval of Amendments to Minerals Agreements

A change in this section clarifies that an amendment, modification, or supplement to a minerals agreement may be approved by the Secretary if the underlying minerals agreement, as amended, modified, or supplemented, meets the Secretary's criteria (§ 225.22(c)) for approval.

Section 225.30. Bonds

Section 225.30 is one of the sections requiring rewrite and inclusion because of the separation of part 225 from parts 211 and 212. Changes in this section emphasize that bonds payable to the Secretary or the Secretary's designee are negotiable within minerals agreements and provide minimal requirements for the bonding of operators holding minerals agreements. Current financial and business practices are now recognized in the regulations by providing for a variety of financial instruments to accompany a personal bond, so that a wide variety of assets may be used to secure the bond.

Section 225.31. Manner of Payments

A change is made in this section to emphasize that, prior to production, all bonus and rental payments shall be made to the Superintendent or Area Director unless specified otherwise in the minerals agreement.

Section 225.34. Unitization and Communitization Agreements, and Well Spacing Requirements

This section, along with the reference to the provisions of § 211.28 of this chapter pertaining to unitization and communitization agreements and well spacing requirements, is removed to allow Indian mineral owners greater flexibility in the structuring of their minerals agreements. The removal of this section does not preclude the inclusion of unitization and communitization and well spacing provisions in a minerals agreement if, at the time of negotiation, it is determined that such provisions are desired to develop certain Indian lands within a minerals agreement where there is mixed land ownership.

Section 225.35. Inspection of Premises; Books and Accounts

A short paragraph has been added to this section to recognize the role of the Office of Surface Mining Reclamation and Enforcement (OSMRE) Director's Representative for the purpose of inspection of properties.

Section 225.36. Minerals Agreement Cancellation; Bureau of Indian Affairs Notice of Noncompliance

Minor changes are made in this section, including a change in the title of the section: (1) To formally include the OSMRE Director's Representative in the noncompliance and cancellation (if required) process; (2) to emphasize that the notice(s) of noncompliance and cancellation are those served by the Bureau of Indian Affairs; and (3) to clarify, by reorganization of paragraphs, noncompliance procedures and the cancellation (if required) process.

Section 225.37. Penalties

This section was brought into 25 CFR part 225 from 25 CFR parts 211 and 212 because of the decision to separate 25 CFR part 225 from the other parts for purposes of final rulemaking. The section was rewritten, including a change in the section title, and made specific to minerals agreements rather than being incorporated by reference, thus enabling 25 CFR part 225 to stand alone as a final rule. A penalties section

within 225 is necessary, because without such a section the Secretary's only enforcement tool is the cancellation of a minerals agreement in the event of a violation of a minerals agreement. Also, there are no penalty provisions under any other Federal agency's regulations to provide for enforcement of minerals agreements which include solid minerals or other mineral commodities not covered by the Federal Oil and Gas Royalty Management Act of 1982 or the Surface Mining Control and Reclamation Act of 1977. In addition, changes are made to paragraphs 225.37(f)(2) and 225.37(f)(3) to clarify that this section does not apply to any action for which the BLM, MMS, or OSMRE have authority to impose a penalty. Therefore, this section will not result in multiple penalties being imposed for the same violation.

Section 225.39. Fees

Provision is made for the Indian mineral owner to acquire an additional interest in minerals agreements without imposition of a filing fee, if provision for such an acquisition by the Indian mineral owner is made in the minerals agreement.

II. Comments Received on Proposed Rule

The notice of Proposed Rulemaking was published in the **Federal Register** on November 21, 1991 (56 FR 58734). The proposed rule provided for a 90-day public comment period ending on February 19, 1992. During the comment period, 27 commenters submitted written comments. All comments were accepted for consideration in preparation of the final rule and are addressed in this section. All substantive comments applicable to sections of 25 CFR part 225, were considered whether directed to part 211, 212, or 225, because some commenters referenced their comments on other parts as applicable to part 225 and because some commenters made only general comments on the proposed regulations which were not directed by the commenter to any specific part.

(1) Several commenters stated that the proposed regulations are unsatisfactory because: (1) Of the effects of the proposed rules on existing leases and operating agreements; (2) inadequate time was provided for review of the proposed rules; (3) the proposed rules should be subject to a negotiated rule-making process among interested tribes, industry, and the Bureau (of Indian Affairs); and (4) public hearings on the proposed rulemaking should be held at locations convenient to the Indian tribes.

Response: As set forth in introductory remarks (above), the Secretary reopened the period for comment on 25 CFR parts 211 and 212 and public hearings have been held in Denver, Colorado and Albuquerque, New Mexico. Regulations at 25 CFR part 225 are treated as final rulemaking because of the need for regulatory guidance for Indian mineral owners, industry, regulatory authorities, and the public. Also, the chief concerns of commenters center on the proposed amendments to 25 CFR parts 211 and 212; part 225 is clearly less controversial than the other two parts. Therefore, the Secretary has decided to proceed with final publication of 25 CFR part 225.

(2) One commenter indicates that the purpose of the proposed rulemaking is to make proposed regulations consistent with the regulations governing mineral leasing and development of Federal lands. The commenter stated that mineral leasing and development on Indian lands are not sufficiently similar to mineral leasing on Federal lands to justify uniformity.

Response: One of the Department's purposes in reformatting and changing of the proposed rules is to make, when appropriate, these regulations consistent with the regulations governing mineral leasing and development of Federal lands (56 FR 58734). Appropriate consistency is desirable because many of the operating and reclamation regulations of other offices and bureaus of the Department are especially applicable in the day-to-day management of the mineral estate on tribal and allotted Indian lands subject to mineral leasing and disposition under 25 CFR parts 211 and 212. The commenter is correct in stating that where mineral leasing and development on Indian lands is dissimilar to leasing and development on Federal lands, different treatment is required of many issues. The consistency among the regulations of various offices and bureaus is de-emphasized in these regulations because the IMDA and these regulations provide the necessary latitude to adequately address the dissimilarities, and because the proposed 25 CFR parts 211 and 212 will now be issued as separate rules.

(3) Several Alaska native corporations ask that a statement be made that lands conveyed pursuant to the Alaska Native Claims Settlement Act are not subject to 25 CFR part 225.

Response: The requested assurance that the proposed regulations, and/or regulations in fact, do not apply to lands conveyed pursuant to the Alaska Native Claims Settlement Act is contained in 25 U.S.C. § 2101 and 2102. Section 225.1 is changed to emphasize that 25 CFR part 225 is applicable only to lands that are held in trust by the United States or are subject to a restriction against alienation imposed by the United States.

(4) Numerous commenters are generally concerned about the effect of the proposed rules on (1) fixed royalty rates more than 12½ percent, (2) terms and conditions of existing leases and operating agreements, (3) the imposition of arbitrary acreage limits on mineral leases, and (4) data gained under permit deemed by operators to be privileged and proprietary.

Response: Most of the general concerns of commenters pertain to the proposed 25 CFR parts 211 and 212 and not to part 225, and will be addressed at the time of proposed or final rulemaking for 25 CFR parts 211 and 212. The terms and conditions of existing leases and operating agreements are unaffected by part 225, unless the leases or agreements are renegotiated to become minerals agreements. Other concerns are negotiable among principals within the framework of a minerals agreement and at the time a minerals agreement is considered.

(5) One commenter objects to the language of § 225.1(a) as proposed which states:

> 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 * * *.

and urged that the language of the authorizing statute be retained in regulation to ensure that Congressional intent is honored.

Response: The language of § 225.1(a) is changed in final rulemaking to read:

> as part of this greater flexibility, where the Secretary has approved a minerals agreement in compliance with the provisions of 25 U.S.C. Chap. 23 and any other applicable provision of law, the United States shall not be liable for * * *.

in keeping with the language of 25 U.S.C. 2103(e).

(6) One commenter states that the language of § 225.1(b) should more specifically state that existing minerals agreements are subject to new regulations except for minerals agreement terms concerning duration of the minerals agreement, the rate of royalty or financial consideration, rental, or acreage unless agreed to by all parties to the minerals agreement. Another commenter states that the provision in § 225.1(b) that new regulations not affect certain provisions of existing minerals agreements is much too broad and unnecessary; that regulations affecting operations and

becoming effective after lease approval will impact lease duration, and further compares the provision in the new regulations to those provisions found in the commenter's standard lease form; and requests that § 225.1(b) be withdrawn.

Response: Section 225.1(b) is specifically intended to clarify that these new regulations, and any future amendments to these regulations, apply to existing minerals agreements except as to certain key provisions in the minerals agreement, unless the parties agree to retroactive effect of these new regulations on these key provisions. The Secretary retains authority to implement or amend and then apply regulations which are deemed necessary to protect the Indian mineral owners and the trust resource. Therefore, no changes in response to these comments were deemed necessary.

(7) One commenter is of the opinion that § 225.1(c) duplicated §§ 225.4 through 225.6 and asked that § 225.1(c) be amended to clarify that the cited regulations do not apply if specifically stated otherwise in a minerals agreement. Another commenter asked that the supplemental regulations of §§ 225.4 through 225.6 be subordinated in § 225.1(c) if inconsistent with the terms of minerals agreements. Other commenters ask that paragraphs at § 225.1(c) and 225.1(d) allow minerals agreement provisions inconsistent with regulations and that § 225.1(c) allow principals to minerals agreements to exempt themselves from regulation by the Bureau of Land Management or the Minerals Management Service.

Response: Sections 225.1(c) and 225.6 are amended to allow the parties greater flexibility in determining how the functions covered in the Minerals Management Service regulations should be handled in their minerals agreements. However, no such flexibility can be provided concerning the actual minerals operations procedures governed by other applicable regulations not expressly inconsistent with this part.

(8) Two commenters state that § 225.1(d) does not sufficiently recognize the regulatory authority of the tribe and applicability of tribal laws and regulations.

Response: Section 225.1(d) specifically recognizes the lawful governmental authority of Indian tribes to regulate the conduct of persons and businesses within their territorial jurisdiction. No additional changes to § 225.1(d) were deemed necessary.

(9) Several commenters object to the definition of "agreement" (§ 225.3) and suggest changes ranging from (1) the inclusion of negotiated agreements under authority other than the IMDA to (2) the exclusion of contracts entered into under other available regulations. One commenter suggests that the word "lease" be deleted from the definition of an agreement to avoid confusion with standard leases. One commenter suggested that the definition should be that of a "minerals agreement" and not just that of an "agreement."

Response: The definition of a minerals agreement is retained in the final rule under the definition of a "minerals agreement," and the definition of "agreement" deleted from the final rule. The definition of "minerals agreement" is carried over from statute (25 U.S.C. 2102) and can include a mineral lease if so negotiated by the principals. Therefore the word "lease" is retained in the definition of "minerals agreement," with the clarification that existing leases and leasing options available under the Act of May 11, 1938 or the Act of March 3, 1909 are not included when "lease" is used in the definition of a "minerals agreement" in the final rule.

(10) One commenter suggests that "coal" be defined because it is referenced in royalty considerations in 25 CFR part 211 as proposed.

Response: The definition in final rulemaking of "minerals" is changed to be more inclusive and now includes coal and lignite of all ranks as well as all hydrocarbons. Also included are all other minerals such that any mineral or mineral fuel however categorized is a proper subject of minerals agreements. For example, peat, variously categorized as a soil conditioner, fertilizer, mineral fuel, and/or hydrocarbon is specifically included in definition as a mineral because it is a non-metalliferous, energy mineral and a non-metalliferous, non-energy mineral.

(11) Two commenters are of the opinion that coal-bed methane should be excluded from the definition of a "gas" and one would exclude substances found as constituent parts of other minerals.

Response: The issues raised by commenters are currently being litigated. The definition of "gas" in these regulations is consistent with the position the Department of the Interior has taken in litigation and should not be taken as affecting any existing minerals agreement or lease or any pending litigation. If necessary, distinction among gases of various origin or association may be made by the use of suitable modifiers (e.g., coal-bed methane, natural gas, or carbon-dioxide gas) during negotiation of minerals agreements by principals.

(12) One commenter suggests that the definition of "gas" should also specify the meaning of "ordinary temperature and pressure conditions" because of perceived differences in ordinary temperature and pressure in subsurface contrasted with ordinary temperature and pressure at land surface.

Response: Ordinary temperature and pressure generally means near room temperature and about one atmosphere pressure as commonly used in the calculation of and the handling of gases and in specified standards for the determination of quantities of materials. The specification of a standard, if required, should be included at the time of preparation of the minerals agreement.

(13) One group of commenters concerned with the definition of "in the best interest of the Indian mineral owner" suggest that the BIA restrict its review to an examination of those factors delineated in the IMDA. Another group of commenters request that the definition be amended to state that the BIA shall consider any factor relevant to the best interests of the Indian mineral owner.

Response: The IMDA provides that the Secretary shall consider, "among other things," those factors listed and thus the Secretary may consider factors not specifically delineated. The factors considered can only be those perceived to be relevant at the time of approval or disapproval of the minerals agreement and not those unknown factors judged relevant in retrospect. The definition is changed in final rulemaking to provide that in making a best interest determination the Secretary shall consider any relevant factor.

(14) One commenter states that the definition of "Indian lands" should be changed to "Indian mineral lands" and that the interest owned in lands or minerals should be restricted to the interest owned in minerals. Another commenter states that the definition of Indian lands has surfaced mysteriously without explanation, may be in conflict with regulatory programs administered by other agencies, and that the BIA should withdraw the current proposal and consult with the Office of Surface Mining and Reclamation and Enforcement prior to initiating any future rulemaking activities on this issue.

Response: The definition of Indian lands is necessary because the IMDA defines an Indian and an Indian tribe in terms of land ownership without respect to whether the land is deemed mineral or non-mineral. The definition is further clarified by defining "Indian mineral owner" and "Indian surface owner."

(15) A commenter suggests that the definition of "lessor" be expanded to include one who is negotiating for or who has entered into a minerals agreement.

Response: This definition has been deleted from the list of definitions because the word "lessor" is not used in the final rulemaking.

(16) One commenter states that the inclusion of sand and gravel in the definition of "minerals" is beyond the statutory language of the IMDA and there is no basis in statute for inclusion of the common materials listed in the definition of "minerals."

Response: At 25 U.S.C. 2102(a) reference is made to exploration for, or extraction, processing, or other development of other energy or non-energy mineral resources in which such Indian tribe owns a beneficial or restricted interest; a reference which includes mineral resources consisting of the common varieties of minerals. For purposes of clarity of definition several examples of common and/or uncommon varieties of minerals and mineral aggregates are listed to illustrate that all minerals and mineral resources on Indian lands are subject to disposition by minerals agreements. Therefore, the definition is unchanged in final rulemaking.

(17) Two commenters object to the exclusion of materials from the definition of mining based on the type and volume of material considered for extraction.

Response: Common varieties of mineral resources extracted in small amounts were excluded from the definition of mining, because the purpose of such extraction is often for local and/or tribal use. The Department's full regulatory program was not thought necessary for such minimal operations. Permits for these small operations are reviewed and approved at the local Superintendent's level. The Indian mineral owner still retains the option of disposing of such mineral resources in whatever types and quantities specified by minerals agreement, if so desired.

(18) One commenter points out that the definitions of "oil" and "gas" are at odds with the definitions used by the Minerals Management Service and suggests that the definitions of the two Federal agencies should be more compatible.

Response: Definitions of "oil" and "gas" at § 225.3 are reasonably in accord with the definitions used by the Bureau of Land Management in the management of mineral leasing and production. The Minerals Management Service definition is more closely tied to measurement and royalty concerns. In those instances where differences in the definitions threaten to confuse issues, the provisions of the minerals agreement should specifically address the problems of concern to the parties.

(19) One commenter states that "paying quantities" should be defined in regulation because many elements of the regulations in force turn on such definition.

Response: Although "paying quantities" may ultimately be defined in 25 CFR parts 211 and 212, in the context of a minerals agreement such a definition, if deemed necessary by the parties, is properly the subject of negotiation and should be included in the minerals agreement. Therefore, the definition is not included in 25 CFR part 225.

(20) One commenter states that the definition of "tar sands" and its placement in the proposed regulations seems to limit development to quarrying or mining and that the regulations should broaden the type of development covered by their terms.

Response: The definition of "tar sands" is deleted and the definition of "minerals" broadened to include all hydrocarbons, solid minerals, or other energy or nonenergy minerals (including tar sands) without exception as properly subject to disposition by minerals agreement regardless of method of extraction.

(21) One commenter suggests that an additional section in the regulation be included after §§ 225.4 through 225.6 advising that Indian mineral owners may have also enacted laws and regulations which apply to many of the activities concurrently governed by Federal agencies, and that explicit mention of the Government's trust responsibility to Indians be included in the proposed regulations.

Response: Provision in the regulation for the laws and regulations of the Indian mineral owners is made at § 225.1(d) and further at §§ 225.21(b)(4) and 225.21(b)(8). The trust responsibility is acknowledged at § 225.1(a).

(22) One commenter is of the opinion that although referenced, it should be specifically stated in § 225.6 that the regulations of the Minerals Management Service apply to the calculation of royalty values.

Response: The incorporation by reference of the authority and responsibility of the Minerals Management Service is sufficient to bring to bear the MMS regulations applicable to the calculation of royalty values. The parties may specify in the minerals agreement that an alternative method be used to calculate value for royalty purposes.

(23) One commenter states that the word "trust" needs to be included in § 225.20(b) together with the reference to the restricted interest. Another commenter suggests that the mineral lands and not the mineral resources be included under the authority to contract.

Response: Section 225.20 is rewritten to contain the same terminology as the IMDA which applies to mineral resources in which the Indian mineral owner owns a "beneficial or restricted interest."

(24) Three commenters express their dissatisfaction with proposed § 225.21(a) which stipulates that upon the request of an Indian mineral owner advice, assistance and information be provided during the minerals agreement negotiation process to the extent of available resources. Commenters further state that the Department is obligated to have resources available to provide adequate technical and financial analyses and also state that availability (sic) of funds should be an excuse for not providing technical assistance only if the regulations require the Secretary periodically to determine the level of funding needed, report that need to Congress, and seek funding adequate to meet the established needs.

Response: The obligation of the Secretary to ensure that upon request of an Indian tribe or individual Indian, such tribe or individual shall have available advice, assistance, and information during the negotiation of a minerals agreement is, in the IMDA, expressly conditioned on the extent of the Secretary's available resources (25 U.S.C. 2106). The future resource needs of the Secretary in the discharge of the trust responsibility and in determining if minerals agreements are in the best interests of the Indian mineral owners are routinely decided in the budget process as set forth in the governing BIA manuals and procedures. In the budget process the anticipated future resource needs are estimated based on current and past experience of the BIA. Therefore, § 225.21(a) remains unchanged.

(25) One commenter prefers that the listing in § 225.21 be deleted and that the tribe decide what should or should not appear in a minerals agreement because it is felt that the listed provisions would lead to BIA requirements.

Response: The listing, which is not intended to be all- inclusive, of provisions which, if applicable, *shall* be addressed consists of those items which the Secretary feels should be included

in a minerals agreement (or most any business-like agreement dealing with minerals) such that the minerals agreement can be approved by the Secretary bearing in mind the Secretary's trust responsibility and determination of the best interest of the Indian mineral owner. Further, some of the provisions, if not addressed, allow regulation by default under rules presently in place and functional. For example, issues of (1) valuation of mineral product, (2) manner of payments, (3) accounting procedures, and (4) auditing procedures if not addressed in a minerals agreement, subsequently approved by the Secretary, will by default be regulated under the standard rules of 30 CFR chapter II, subchapters A and C.

(26) One commenter points out that there may be additional provisions, not listed in § 225.21(b) as proposed, which ought to be addressed in minerals agreements; and that all provisions should be optional and at the discretion of the Indian mineral owner.

Response: Section 225.21(b) has been rewritten to include provisions other than those listed and to make it clear that the parties to minerals agreements can include provisions not listed. However, the minerals agreement must be sufficient in detail and completeness at the time of submittal so that it can be approved by the Secretary.

(27) One commenter ventures that where the tribe is the decision maker or operator the listed elements (§ 225.21(b)) of a minerals agreement would require the tribe to recite how it intends to do business, and wishes to know if this is the Secretary's intent.

Response: It is not the intent of the Secretary to intrude into the business practices of the Indian mineral owner. If a tribe is cast as an operator and a minerals agreement is the required or chosen instrument of conduct of business, then such minerals agreement must be approved by the Secretary. Under such conditions the tribe has recourse to 25 U.S.C. 2103(c), requiring the Department of the Interior to hold the terms and conditions, among other things, of minerals agreements as privileged proprietary information of the affected Indian or Indian tribe.

(28) One commenter states that § 225.21(b) should be expanded to pinpoint which rule in regulation would be established as the governing rule by default if a minerals agreement is silent on a particular issue, especially with regard to aspects of operations. This specific default listing would be used to determine if the Indian mineral owner should negotiate a provision in the minerals agreement different from the default rule.

Response: Most Indian mineral owners negotiating or considering the negotiation of a minerals agreement have at least a modest familiarity with the operating regulations of the Federal agencies as identified in §§ 225.4, 225.5, and 225.6. This familiarity, in addition to the advice, assistance, and information that can be provided by the Secretary during negotiations, and the independent legal and technical resources available to Indian mineral owners will allow for informed analysis and consideration of provisions to be included in a minerals agreement. A default listing, although likely of considerable value, does not lend itself well to inclusion in the regulation. A default listing is more properly subject to inclusion in a BIA manual, and is presently being considered for inclusion in manuals in preparation.

(29) Two commenters find the word "indemnifying" in § 225.21(b)(3) confusing and suggest change.

Response: This section is rewritten to specify that in a minerals agreement a statement be made providing indemnity to the Indian mineral owner(s) and the United States from all claims, liabilities and causes of action that may be made by persons not a party to the minerals agreement.

(30) One commenter points out that there is no mention of mineral valuation in proposed § 225.21(b) and suggests that mineral valuation be included.

Response: The inclusion is made at § 225.21(b)(7) to include provisions establishing mineral valuation procedures.

(31) One commenter suggests that § 225.21(b)(10) would be more helpful if the kinds of bonds to be considered and the parties to be included were itemized.

Response: The kinds and types of bonds to be considered and the amounts of bonds (if not Statewide or Nationwide bonds) are negotiable in the minerals agreement. Section 225.21(b)(10) is therefore unchanged in final rulemaking. However, § 225.30 provides guidance as to the bond security acceptable to the Secretary and also provides guidance as to minimal bonding requirements in response to the provisions of a minerals agreement.

(32) One commenter suggests that an addition be made at § 225.21(b)(21) to establish limitations, if any, on assignments of interest.

Response: The suggested provision as to assignments at § 225.21(b)(9) is rewritten to suggest that any limitations on the right to assign the minerals agreement be considered during the negotiation of the minerals agreement.

(33) One commenter points out that proposed § 225.21(d) is unclear in describing minerals agreement handling after tribal preparation and approval.

Response: The regulations at § 225.21(d) are rewritten to clarify the handling of the minerals agreement after execution by the Indian mineral owner(s) and the prospective operator.

(34) Several commenters believe that 180 days (or 60 days after compliance, if required, with the National Environmental Policy Act of 1969) allowed for Secretarial approval or the disapproval of minerals agreements at § 225.22(a) is much too long and recommended allowable times of 30 to 90 days for approval or disapproval.

Response: It has been the experience of the Department that at times the full 180 days is required for the review and decision process to run its course partly because of the need to prepare and provide to the Indian minerals owners written findings forming the basis of Secretarial intent to approve or disapprove a minerals agreement. Therefore, the full time interval allowed in the IMDA (25 U.S.C. 2103(a)) is retained in final rulemaking.

(35) One commenter urges that minerals agreements presented to the Secretary as fully negotiated shall be approved if determined to be in compliance with the law. Another commenter suggests that the only basis for disapproval be that the minerals agreement is not in the best economic interest of the tribe.

Response: The duties and responsibilities of the Secretary in the approval process, including, among other things, the factors to be considered, the extent of required study, and the prior notice of proposed findings, are specifically set forth in the IMDA (25 U.S.C. 2103) and elsewhere. Therefore, the Secretary must and will approve or disapprove minerals agreements in compliance with existing laws and regulations, which allow the Secretary the discretion to weigh relevant factors and require the Secretary to make, on the basis of the Secretary's judgement, a best interest determination.

(36) One commenter states that the regulations should specify that the time allowed for Secretarial approval or disapproval of a minerals agreement should begin at the time of first submittal of a minerals agreement for approval.

Response: The time schedule for Secretarial approval or disapproval of a minerals agreement begins when the minerals agreement is first submitted for

approval to the Secretary or the Secretary's designee, usually the appropriate Superintendent, or in the absence of a Superintendent, the Area Director.

(37) A commenter suggests that § 225.22(b) be rewritten to require the Secretary to call a meeting of interested parties to address the concerns the Secretary may have about a minerals agreement, and so facilitate any necessary amendments to the minerals agreement. Another commenter suggested that the word "lessor" be substituted for the words "affected Indian mineral owners."

Response: The negotiation of a minerals agreement is completed by the Indian mineral owner(s) and the prospective operator(s) prior to submission of the minerals agreement for approval. The Secretary participates in the negotiation of a minerals agreement only at the request of the Indian mineral owner and only to the extent of giving advice, assistance, and information to the Indian mineral owner (25 U.S.C. 2106) during the negotiation. The IMDA provides that the Secretary is to give the Indian mineral owner written findings forming the basis of the Secretary's intent to approve or disapprove a minerals agreement. The written findings can include recommendations for changes in the minerals agreements. These written findings serve the same purpose as the meeting suggested by the commenter. The words "affected Indian mineral owners" are retained in final rulemaking because not all minerals agreements will be in the form of a "lease."

(38) One commenter suggests that proposed § 225.22(b) be changed to agree with § 225.23 in that the preparation of an economic assessment is to be mandatory.

Response: The necessary changes have been made at §§ 225.22(b) and 225.23.

(39) One commenter indicates that the proposed § 225.22(c) contains confusing language in the description of handling minerals agreements in the event disapproval is being considered.

Response: Paragraphs 225.22(c) and 225.22(f) are rewritten and the definitions of "Assistant Secretary" and "Secretary" are changed at § 225.3 to remove the confusion in the regulation. The "Assistant Secretary" of proposed rulemaking is now titled as the "Assistant Secretary—Indian Affairs" specifically defined to recognize the statutory authority of the Assistant Secretary—Indian Affairs to disapprove minerals agreements when so delegated by the Secretary.

(40) One commenter advocates that proposed rulemaking be revised to provide that, at the request of the tribe, the Secretary must contract with the tribe, or an independent consultant selected by the tribe and approved by the Secretary, to prepare necessary economic and geologic evaluations and assessments.

Response: The economic assessment must be prepared and made available to the Indian mineral owner during the 180-day approval period available to the Secretary and is designed to ensure that the Secretary adequately considers the potential economic return to the tribe from a negotiated minerals agreement. The conclusions contained in an economic assessment may well be based upon or include more elaborate economic and geologic evaluations completed through previous contracting by the Secretary and/or the tribe. The time available during the approval period is insufficient to permit elaborate studies, evaluations, contracting and subcontracting, transfers and disbursements of funds, and detailed studies of alternatives arising or which could arise from the consideration of a minerals agreement for approval. The contracting processes and evaluations envisioned by the commenter ordinarily would be completed and available prior to the commencement of the approval process and should be completed and available prior to or during the negotiation of a minerals agreement. Such contracting does occur under separate authority and is not properly part of these regulations dealing with minerals agreements for development of mineral resources.

(41) One commenter prefers that deference be given to tribal conclusions based on expert analysis rather than an economic assessment prepared by the Secretary.

Response: The Secretary will give appropriate weight and deference to all tribal conclusions and expert analysis available at the time of preparation of the economic assessment.

(42) One commenter opposes the provisions of proposed § 225.23 because they would cause too much delay in the leasing process.

Response: The preparation of the economic assessment must be completed within the 180-day time period allowed for the approval or disapproval of minerals agreements and therefore will not delay the approval process.

(43) One commenter would like the regulations to specifically state that an economic assessment (§ 225.23) will include a review of whether, in the Secretary's view, the minerals agreement is likely to result in a profitable operation over time.

Response: At 25 U.S.C. 2103(b) the Secretary is obligated to consider the potential economic return to the tribe (Indian mineral owner). The economic assessment is unlikely to contain an estimate of the likelihood of the profitability of an enterprise unless extensive and detailed information gathering and analysis bearing upon the profitability question has been completed prior to submittal of the minerals agreement for approval. In many instances, the information upon which to base a profitability estimate, especially for a specific operator, is not available or does not exist.

(44) One commenter suggests that proposed § 225.23(b) should be limited to minerals agreements that establish a royalty rate and not to other agreements that depend on the existence of such royalty agreements in order to be effective (operating agreements or farmouts).

Response: Side agreements between the operator and a third party are not affected by the IMDA or these regulations unless by provision within the approved minerals agreement or unless such side agreement constitutes an amendment, modification, or supplement to the minerals agreement (See § 225.28,) in which case the amendment, modification, or supplement must be approved in writing by all parties as well as the Secretary.

(45) Two commenters state that proposed § 225.23(c) should be amended to delete the last words "when such a comparison can be readily made."

Response: In § 225.23(c) the word "readily" has been changed to "reasonably." Depending upon the mineral commodity and provisions of the minerals agreement such comparisons can, at times, not be reasonably made. Oil and gas leasing is widespread and frequently done by competitive bidding and the results are widely and completely reported, thus there may be information available to make such a comparison. However, in the case of a minerals agreement involving, for example, a deposit of single purpose clay subject to special processing and marketing by a single operator and supplier there may be insufficient or even an absence of competitive bidding, or other information, upon which to make a comparison.

(46) One commenter is of the opinion that procedures apparently contemplated by § 225.23(c) reflect the general practice within the Bureau that

any geologic, economic or other technical analyses are performed by the Secretary, if at all, only after a minerals agreement has been negotiated; that this practice puts the cart before the horse; that technical evaluation work needs to be completed before the tribe begins negotiations (i.e., minerals inventories, seismic and geologic data analysis, production and revenue projections, etc.); that the Department's lack of commitment to perform adequate technical evaluations, is evidenced by the proposed FY 1993 budget for the BIA Division of Energy and Mineral Resources; that, that proposal eliminates all funding for mineral assessment and special project grants to the tribes; that those funds have been used in the past to conduct the technical analyses which are essential for adequate negotiations by the tribes and adequate review by the Department; that these regulations should be amended to strengthen the availability of technical assistance to the tribes at the beginning of the negotiation process, and not rely on Secretarial reviews after the negotiations are completed; and that this approach would enhance the negotiating position of the tribes and further full tribal self-determination in mineral development.

Response: Sound business practices indicate that the detailed economic and technical analysis and evaluation should precede the submittal for approval of a minerals agreement by an Indian mineral owner. Such procedures aid both in negotiation of the minerals agreement and in the preparation of the economic assessment. As previously stated (above), the 180-day time interval during which the economic assessment must be completed, effectively prevents elaborate or time-consuming analysis and evaluation for inclusion in the economic assessment. Technical assistance to the Indian mineral owners is addressed at § 225.21(a). Section 225.23(c) is left unchanged.

(47) One commenter states that § 225.24 as proposed requires environmental surveys prior to approval of the minerals agreement and another states that a cultural resources survey could be delayed until the commencement of operations and should be limited to the area disturbed by operations.

Response: The Secretary is required to comply with the National Environmental Policy Act of 1969 and any other requirement of Federal law prior to the approval of a minerals agreement (25 U.S.C. 2103(a)). If the issuance of a minerals agreement does not have a significant impact on the human environment, then the agreement may be approved without extensive environmental study. The section at proposed § 225.24 merely sets forth the authority and procedure for required compliance. Environmental requirements after approval of a minerals agreement are unaffected by the proposed rule.

(48) One commenter states that the regulations should provide that the Bureau of Land Management have supervision of any required environmental surveys.

Response: The Secretary is responsible for compliance with the National Environmental Policy Act of 1969 and all other applicable Federal law and as such may delegate authority as appropriate.

(49) Several commenters state that the proposed § 225.25 requires or prefers dispute resolution by arbitration or mediation.

Response: Change is made in final rulemaking to clarify that the minerals agreement shall provide for resolution of disputes and that the Secretary has a trust obligation to the Indian mineral owner(s). The specific mechanism is subject to negotiation among principals to minerals agreements.

(50) One commenter states there should be no requirement for provision for a dispute resolution mechanism in minerals agreements.

Response: In approving or disapproving a minerals agreement the Secretary is required to consider, among other things, provisions for resolving disputes that may arise between the parties to the minerals agreement (25 U.S.C. 2103(b)).

(51) Several commenters express concern about the right of the Secretary to preempt the dispute resolution mechanism, the purpose of preemption, and lack of explanation of how such preemption shall take effect and what the effect of such preemption will be.

Response: The Secretary's trust responsibility, an obligation reaffirmed at 25 U.S.C. 2103(e), leads to the inclusion of §§ 225.36 and 225.37 in the regulations. Although the dispute resolution provision to be included in the minerals agreement will provide the forum in which the Indian mineral owner and the operator can resolve any disputes that arise, §§ 225.36 and 225.37 provide the Secretary with the means to deal with any violations of the terms and conditions of the minerals agreement, or applicable laws or regulations, that are not amenable to resolution through the forum chosen in the minerals agreement. Any action taken pursuant to §§ 225. 36 and 225.37 will be at the discretion of the Secretary.

(52) One commenter states that it is unclear in proposed regulation why the Secretary is not made a party to the dispute resolution mechanism.

Response: Section 225.25 has been changed to delete the express prohibition on the Secretary being a party to the dispute resolution mechanism. However, the Secretary should not be made a party to the mechanism given the overall intent of these regulations to grant more responsibility and flexibility to the Indian mineral owner. The Secretary retains a role in the protection of the rights of the Indian mineral owner under §§ 225.36 and 225.37.

(53) One commenter questions the appropriateness of audit standards, as set forth in proposed § 225.26, to all types of mining operations.

Response: This section is changed in final rulemaking to set forth standards applicable to all mineral operations taking place as a result of minerals agreements.

(54) One commenter points out that the terminology in § 225.26 used to describe those with payment obligations arising from a minerals agreement are inconsistent with definitions in § 225.3.

Response: The commenter is correct, however, the additional descriptives of payors are retained because any mineral commodity may be included in a minerals agreement and other Federal agencies variously describe in regulation such operators as payors, lessees, operators, etc.

(55) One commenter suggests that the address of the Minerals Management Service be deleted at § 225.27 because the address may be changed.

Response: The commenter is correct in that the address may change in the future. Current language is retained in final rulemaking in an effort to make current regulations reflect current procedures.

(56) One commenter expresses concern that proposed § 225.28 is unwieldy, would be an impediment to successful development of Indian lands, and that amendments should be approved 30 days after submittal.

Response: A minerals agreement or any amendment, modification, or supplement to a minerals agreement is subject to the approval of the Secretary (25 U.S.C. 2102(a)). In the discharge of the trust responsibility and in the best interest of the Indian mineral owner the Secretary cannot permit an approved minerals agreement to be substantially changed by an unapproved amendment, modification, or supplement to that minerals agreement. Provision is made in the final rulemaking for approval of an amendment, modification, or supplement separately providing that the underlying minerals agreement, as

amended, modified, or supplemented meets the criteria of approval at § 225.22.

(57) One commenter points out that only a prospective operator which is a corporation should be required to comply with proposed § 225.29(b)(2).

Response: The necessary change is made in final rulemaking.

(58) One commenter prefers that a section on bonds be included similar to that in proposed 25 CFR part 211; and that provision be made to require bonds specifically directed to the protection of the surface estate as well as the mineral estate, and that the payee be declared to be the Indian surface owner and/or the Indian mineral owner rather than the Secretary or the Bureau. Also, the commenter suggests that provisions permitting the use of Statewide and Nationwide bonds be deleted from the proposed regulations and that provision be made for the required amount of bonds to be increased in any particular case at the discretion of the Secretary, after consultation with the Indian mineral owner or the Indian surface owner; and that no bond be cancelled without the written approval of the Secretary, with concurrence of the Indian mineral owner or the Indian surface owner.

Response: The rule at § 225.30 is rewritten in recognition of the concerns of the commenter. The purpose of § 225.30 in final rulemaking is to provide the minimal requirements for the bonding (or equivalent surety) of operators conducting mineral operations on Indian lands such that the Secretary may adequately and timely fulfill the trust responsibility. The final determination of the kinds and amounts (if not Statewide or Nationwide bonds) of bonds is a provision of minerals agreements subject to negotiation among principals to the minerals agreement. The Secretary remains the payee in all instances in order that bonds may be released or called timely in support of the trust responsibility. The Secretary encourages the consideration of bonds and bonding at the time of agreement at § 225.21(b)(10).

(59) One commenter states that proposed § 225.31 should provide that the Minerals Management Service perform accounting, payment monitoring, and auditing functions under the Federal Oil and Gas Royalty Management Act of 1982 whether or not payments are made to the Minerals Management Service, or some other payee designated by the Indian mineral owner and approved by the Secretary, including private lock box arrangements with a tribe's bank.

Response: Minerals Management Service regulations applicable to minerals agreements are contained in 30 CFR chapter II, subchapters A and C, and are incorporated in 25 CFR part 225 by reference at §§ 225.1(c) and 225.6. Valuation, method of payment, accounting, auditing and monitoring functions of the MMS are thus applicable unless the minerals agreement provides alternatives as § 225.(1)(c) and § 225.6 authorize. The Federal Oil and Gas Royalty Management Act of 1982 is concerned only with oil and gas and does not include solid minerals.

(60) One commenter indicates that in the proposed rules the designation of method of payment should more properly be an agreement between the lessor and the Secretary.

Response: The section at § 225.31 is rewritten in final rulemaking to clarify the regulation. The prospective operator and the Indian mineral owner have the opportunity to negotiate the manner of payment as set forth in §§ 225.21(b)(4) and 225.21(b)(6). Time of payment shall be in accordance with 30 CFR chapter II, subchapters A and C.

(61) One commenter points out that under proposed § 225.32(b) the operator is required to obtain drilling permits before commencement of operations and believes that the requirement for a drilling permit should be allowed to be waived by the parties to the minerals agreement.

Response: The operating and reclamation rules and regulations of the Secretary governing the management of *minerals operations and reclamation on* Indian lands are applicable to minerals agreements. Therefore, drilling permits must be secured from the proper authority before commencement of operations, but the operating and reclamation regulations need not be written separately and in detail into each and every minerals agreement at the time the minerals agreement is submitted to the Secretary for approval. Detailed operating and reclamation requirements will be part of the approval process of oil and gas and mining operations.

(62) One commenter states that the regulation at § 225.33 should define an assignment to include any instrument or agreement which either makes a present conveyance of an interest in the minerals or obligates one party to convey any interest in the minerals to another party upon performance of some condition.

Response: The suggested definition raises the possibility that under some conditions a minerals agreement could of itself be an assignment and the Secretary would be in the position of approving a minerals agreement conveying an interest that would be better conveyed by an instrument commonly perceived to be an assignment, leaving the underlying minerals agreement intact. Assignments, including the rights and conditions of assignment, are a subject of negotiation in minerals agreements and the principals are encouraged to establish these rights and conditions at §§ 225.21(b)(4) and 225.21(b)(9).

(63) One commenter states that the proposed section governing assignments should provide that no bond will be released until an audit has been conducted which confirms that the party to be released has paid the Indian mineral owner all amounts due under the minerals agreement.

Response: Regulations at § 225.33 provide that bonds may be released upon submission of satisfactory bonds by the assignee, and a determination that the assignor has satisfied all accrued obligations. It is anticipated that something less than a final audit will be required to make the determination that all accrued obligations have been satisfied. If an audit is desired, this item should be included in the minerals agreement. The proposed section is unchanged in final rulemaking.

(64) One commenter proposes that proposed § 225.33 be changed to state that an assignment of interest in a minerals agreement not be valid unless approved by the Indian mineral owner(s).

Response: *All minerals agreements* thus far approved by the Secretary contain provisions for approval of assignment(s) by the Indian mineral owner(s). The inclusion of provisions which address approvals of assignments in minerals agreements is encouraged at § 225.21(b)(9). The proposed change is not included in final rulemaking.

(65) One commenter states that proposed § 225.33 requires the assignor to have satisfied all accrued obligations before the assignor's bond may be released and suggests that the assignee be allowed to secure the assignor's obligations with the assignee's bond.

Response: Subject to approval, the assignee may assume and/or discharge (by execution of bond if appropriate) the obligations of the assignor. However, the accrued obligations must be satisfied before the assignment will be approved.

(66) A commenter believes that the requirement of proposed § 225.33 that the assignment be filed with the Secretary immediately after the execution by all parties imposes an onerous burden on the parties and

recommends a reasonable time period, such as within 60 days after execution, be allowed for filing.

Response: The Secretary requires that assignments of interest be filed promptly because assignments can affect the payment and subsequent distribution of royalties to the Indian mineral owner. The proposed rule is changed to require the assignment to be filed with the Secretary within five (5) working days of execution by all parties.

(67) One commenter points out that in proposed § 211.28 tribal consent is not required for unitization unless tribal consent is required in the minerals agreement and suggests amending the proposed regulation to recognize that tribal consent can be required either by provisions in a minerals agreement or by tribal law.

Response: The concerns of the commenter are valid. However, the question of tribal consent, as well as all other issues relating to unitizing and communitizing of lands, should be specified in the minerals agreement. The Secretary encourages consideration of the unitizing and communitizing of lands at § 225.21(b)(19). Specific requirements for the content, effect, and handling of unitization and communitization agreements are not included in these regulations.

(68) One commenter states there should be some provision in proposed § 225.36 indicating that the Secretary's authority to cancel a minerals agreement is not exclusive and further, that the tribe should have independent authority to bring action in a court of competent jurisdiction for cancellation of a minerals agreement if adequate grounds exist under applicable law.

Response: Under these regulations the Secretary has the exclusive right of cancellation by virtue of the sole right of approval of a minerals agreement. Therefore, the Secretary retains the right to cancel a minerals agreement in the face of a violation of the provisions of the minerals agreement or any applicable law, regulation, or order. There is no impairment of the independent authority of an Indian mineral owner to bring an action in a court of competent jurisdiction for cancellation of a minerals agreement if adequate grounds exist under applicable law.

(69) One commenter believes that the words "5 days" should be changed to "seven (7) days" at proposed § 225.36(c).

Response: The language is changed in final rulemaking to read "five (5) working days."

(70) One commenter states that in proposed § 225.36 there is no right to a hearing before the lease may be canceled, that only written responses are allowed, and that the right to a hearing should be restored.

Response: Rights to hearings and/or dispute resolution may be contained in the provisions of minerals agreements. Further, the rights of the operator under 25 CFR part 2 (see § 225.38) are not abridged. The suggested provisions are not incorporated at § 225.36.

(71) One commenter suggests that the word "issue" at proposed § 225.36(a)(1) be changed to "serve."

Response: The regulations at proposed §§ 225.36(a) and 225.36(b) are clarified by reordering sentences to separate minimal content of notices clearly from the Secretary's authority to issue the notices.

(72) One commenter indicates the words "permittee" or "lessee" at proposed § 225.36(c) should be changed to "operator."

Response: These changes have been made in final rulemaking.

(73) One commenter states that proposed § 225.37 needs to be corrected such that there is no limit to other remedies agreed to in a minerals agreement.

Response: The rule has been rewritten and made specific to minerals agreements. As now written the commenters suggestion is incorporated in final rulemaking.

(74) One commenter states that in the event an Indian tribe is the operator, penalties set by § 225.37 will be assessed against the tribe and asks tribes be exempted from imposition of the Secretary's civil penalties.

Response: In the event the tribe is or becomes the operator and a minerals agreement is the chosen instrument of conducting minerals operations on Indian lands, then the tribe and/or their designated operator will be subject to the regulations at § 225.37.

(75) One commenter states that filing fees under proposed § 225.39 should not apply to assignments to the Indian mineral owner.

Response: The concerns of the commenter have been addressed in the final rulemaking. Acquisition of an additional interest in an existing minerals agreement by the Indian mineral owner will not carry the filing-fee requirement, if provision for such acquisition is part of a minerals agreement approved by the Secretary prior to the acquisition.

III. Conclusion

The scope and purpose of this part is to implement the IMDA which provides Indian mineral owners greater flexibility for the development and sale of their mineral resources. The objective of the IMDA is to permit Indian mineral owners to enter into minerals agreements which give the Indian mineral owners more responsibility in overseeing and greater flexibility in disposing of their mineral resources. Because of the wide range of minerals agreements which Indian mineral owners and industry may negotiate, the Department has drafted regulations which (1) fully implement the statutory procedures prescribed for obtaining a minerals agreement for development of Indian minerals, (2) provide sufficient guidance to both Indian mineral owners and operators as to what information will be required for the Secretary's review of minerals agreements, and what type of criteria will be applied to the review, and (3) specify how the minerals agreement will be monitored by the Department to ensure that the Indian mineral owner's resources are protected. Some of the provisions in the regulations are applicable unless the parties to the minerals agreement specifically agree otherwise. Some of the issues subject to 30 CFR chapter II, subchapters A and C are negotiable by parties entering into a minerals agreement. Specifically, issues of: (1) Valuation of mineral product, (2) manner of payments, (3) accounting procedures, and (4) auditing procedures are negotiable such that both the Indian mineral owner and designees of the Secretary may initiate and complete audit investigations and enforcement of negotiated minerals agreement provisions. Conversely, the operating regulations germane to minerals agreements under 43 CFR Groups 3100, 3200, 3400, and 3500 and 30 CFR part 750 are not negotiable. Thus, the regulations allow the parties great freedom to negotiate many issues and specify in the minerals agreement how they intend to address these issues. Specific regulatory provisions are mandatory only if applicable. However, most of the sections address issues which need to be addressed in a minerals agreement. Although the Department would not intend to dictate the terms of a minerals agreement, it does believe that minerals agreements which fail to address important issues and which may expose the Indian mineral owners to an unreasonable amount of risk may need to be changed prior to approval.

Executive Order No. 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. In addition the Department of the Interior has determined that this rule 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 final 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 promulgation of final rulemaking reduces the regulatory burden imposed on such persons in several instances. The final rulemaking will increase the filing fee (from $10.00 to $75.00) which must accompany each minerals agreement or an assignment thereof and is no different from the filing fees presently required when filing on Federal lands. This increase is necessary to partially compensate the United States for its costs of processing those documents, but experience shows that this increase is not an amount that will discourage or prevent any small business from contracting to engage in mineral development on Indian lands. This rule promotes economic growth by providing tribes and individual Indian mineral owners opportunity to negotiate minerals agreements which maximize their best economic interest and minimize any adverse environmental and cultural impact and at the same time enhance economic growth by allowing wise use of a portion of the National mineral reserve base which might not be otherwise available.

Executive Order No. 12612

The Department has determined that this rule does not have significant federalism effects. This rule supports the goals of E.O. No. 12612 by enhancing self determination among the Indian communities by encouraging tribes to responsibly and independently achieve their personal, cultural, and economic objectives through their own efforts.

Executive Order No. 12630

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

National Environmental Policy Act of 1969

The changes made by the final rulemaking are for the purpose of streamlining and updating implementation of the IMDA. These rules constitute an administrative action and do not impact on the physical environment. The approval of minerals agreements will 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 of Indian Affairs 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 the initially proposed rulemaking. The Department of the Interior has determined therefore, that there will be no significant impact to the human environment.

Paperwork Reduction Act of 1980

It has been determined by the Office of Management and Budget that the information Collection Requirements contained in Part 225 do not require review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 25 CFR Part 225

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

Words of Issuance

For the reasons set out in the preamble, part 225 of Title 25 chapter I of the Code of Federal Regulations is added as set forth below.

PART 225—OIL AND GAS, GEOTHERMAL, AND SOLID MINERALS AGREEMENTS

Subpart A—General

Sec.

Subpart B—Minerals Agreements

Authority: Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108; and 25 U.S.C. 2 and 9.

Subpart A—General

§ 225.1 Purpose and scope.

(a) The regulations in this part, administered by the Bureau of Indian Affairs under the direction of the Secretary of the Interior, govern minerals agreements for the development of Indian-owned minerals entered into pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108 (IMDA). These regulations are applicable to the lands or interests in lands of any Indian tribe, individual Indian or Alaska native 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. These regulations are intended to ensure that Indian mineral owners are permitted to enter into minerals agreements that will allow the Indian mineral owners to have more responsibility in overseeing and greater flexibility in disposing of their mineral resources, and to allow development in the manner which the Indian mineral owners believe will maximize their best economic interest and minimize any adverse environmental or cultural impact resulting from such development. Pursuant to section 4 of the IMDA (25 U.S.C. 2103(e)), as part of this greater flexibility, where the Secretary has approved a minerals agreement in compliance with the provisions of 25 U.S.C. chap. 23 and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such minerals agreement. However, as further stated in the IMDA, 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 minerals 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 April 29, 1994, and shall be subject to amendment at any time by the Secretary; *Provided*, that no such regulation that becomes effective after the date of approval of any minerals agreement shall operate to affect the duration of the minerals agreement, the rate of royalty or financial consideration, rental, or acreage unless agreed to by all parties to the minerals 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 §§ 225.4, 225.5, and 225.6 are supplemental to these regulations, and apply to minerals agreements for development of Indian mineral resources unless specifically stated otherwise in this part or in other Federal regulations. To the extent the parties to a minerals agreement are able to provide reasonable provisions satisfactorily addressing the issues of valuation, method of payment, accounting, and auditing, governed by the Minerals Management Service regulations, the Secretary may approve alternate provisions in a minerals agreement.

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

§ 225.2 Information collection.

It has been determined by the Office of Management and Budget that the Information Collection Requirements contained in part 225 do not require review 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.

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

Assistant Secretary—Indian Affairs means the Assistant Secretary—Indian Affairs of the Department of the Interior, a designee of the Secretary of the Interior who may be specifically authorized by the Secretary to disapprove minerals agreements (25 U.S.C. 2103(d)) and to issue orders of cessation and/or minerals agreement cancellations as final orders of the Department.

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, 3180, 3260, 3280, 3480 and 3590.

Director's Representative means the Office of Surface Mining Reclamation and Enforcement Director's Representative authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR part 750 and 25 CFR part 216.

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

Geothermal resources means: (1) All products of geothermal processes, including 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 Secretary 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 or a unitization or communitization agreement) the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects.

Indian lands means any lands or interests in lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, 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 mineral owner means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns a mineral interest in oil and gas, geothermal resources or solid minerals, 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 that owns the surface estate 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.

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

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

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

Minerals 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, or the Act of March 3, 1909), contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing, or other development of minerals in which an Indian mineral owner owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such minerals.

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

Mining means the science, technique, and business of mineral development, including, but not limited to: opencast work, underground work, in-situ leaching, or other methods 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

a mineral exceeds 5,000 cubic yards in any given year.

Oil means all non-gaseous hydrocarbon substances other than 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.

Operator means a person, proprietorship, partnership, corporation, or other business entity that has entered into an approved minerals agreement under the authority of the Indian Mineral Development Act of 1982, or who has been assigned an obligation to make royalty or other payments required by the minerals agreement.

Secretary means the Secretary of the Interior or an authorized representative, except that as used in § 225.22 (e) and (f) the authorized representative may only be the Assistant Secretary for Indian Affairs (25 U.S.C. 2103(d)).

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

Superintendent means the Bureau of Indian Affairs official in charge of an agency office.

§ 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 3180—Onshore Oil and Gas Unit Agreements: Unproven Areas, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations. These functions include, but are not limited to, resource evaluation, approval of drilling permits, approval of mining, reclamation, and production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, as amended, apply to minerals agreements approved under this part.

§ 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.*). The relevant regulations for surface mining and reclamation operations are found in 30 CFR part 750 and 25 CFR part 216. These regulations, as amended, apply to minerals agreements approved under this part.

§ 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, subchapters A and C. These regulations, unless specifically stated otherwise in this part or in other regulations, apply to all minerals agreements approved under this part. To the extent the parties to a minerals agreement are able to provide reasonable provisions satisfactorily addressing the issues or functions governed by the MMS regulations relating to valuation of mineral product, method of payment, accounting procedures, and auditing procedures, the Secretary may approve alternate provisions in a minerals agreement.

Subpart B—Minerals 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 the tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in mineral resources may include those resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that inclusion of the resources is in the best interest of the individual 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. The Secretary shall provide advice, assistance, and information to the extent allowed by available resources.

(b) No particular form of minerals agreement is prescribed. In preparing the minerals agreement the Indian mineral owner shall, if applicable, address provisions including, but not limited to, the following:

(1) A general statement identifying the parties to the minerals agreement, the legal description of the lands, including, if applicable, rock intervals or thicknesses subject to the minerals agreement, and the purposes of the minerals agreement;

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

(3) A statement providing indemnification to the Indian mineral owner(s) and the United States from all claims, liabilities and causes of action that may be made by persons not a party to the minerals agreement;

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

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

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

(7) Provisions establishing accounting and mineral valuation procedures;

(8) Provisions establishing operating and management procedures;

(9) Provisions establishing any limitations on assignment of interests, including any right of first refusal by the Indian mineral owner in the event of a proposed 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 minerals 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 parties;

(17) Provisions describing the proposed manner and time of performance of future abandonment, reclamation and restoration activities;

(18) Provisions for reporting production and sales;

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

(20) Provisions for protection of the minerals agreement lands from drainage and/or unauthorized taking of mineral resources; and

(21) Provisions for record keeping.

(c) In order to avoid delays in obtaining approval, the Indian mineral owner is encouraged to confer with the Secretary prior to formally executing the minerals agreement, and seek advice as to whether the minerals agreement appears to satisfy the requirements of § 225.22, or whether additions or corrections may be required in order to obtain Secretarial approval.

(d) The executed minerals agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the minerals agreement, shall be forwarded by the tribal representative to the appropriate Superintendent, or in the absence of a Superintendent to the Area Director, for approval.

§ 225.22 Approval of minerals agreements.

(a) A minerals agreement submitted for approval pursuant to § 225.21(d) 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 thirty (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 the minerals agreement.

(1) The written findings shall include an environmental study which meets the requirements of § 225.24 and an economic assessment, as described in § 225.23.

(2) The Secretary shall include in the written findings any recommendations for changes to the minerals agreement needed to qualify it for approval.

(3) The 30-day period shall commence to run as of the date the written findings are received by the Indian mineral owner.

(4) 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; 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 (names of Indian mineral owners).

(c) A minerals agreement shall be approved if, at the Secretary's discretion, it is determined 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 adverse cultural, social, or environmental impacts 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 and 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) and paragraphs (b)(1) through (b)(4), inclusive, 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 a Superintendent or Area Director believes that a minerals agreement should not be approved, a written statement of the reasons why the minerals agreement should not be approved shall be prepared and forwarded, together with the minerals agreement, the written findings required by paragraph (b) and subparagraphs (b)(1) through (b)(4), inclusive, of this section, and all other pertinent documents, to the Secretary for a decision with a copy to the affected Indian mineral owner.

(f) The Secretary shall review any minerals agreement referred with a recommendation that it be disapproved, and the Secretary's decision to disapprove a minerals agreement shall be deemed a final Federal agency action (25 U.S.C. 2103(d)).

§ 225.23 Economic assessments.

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

(a) Whether there are assurances in the minerals 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) Whether the minerals agreement is likely to provide the Indian mineral owner with a return on the production comparable to what the owner might otherwise obtain through competitive bidding, when such a comparison can reasonably 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 on Environmental Quality (CEQ) found at 40 CFR Parts 1500–1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593 (3 CFR 1971–1975 Comp., p. 559, May 13, 1971). If these surveys indicate that a mineral development will have an adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or that appropriate excavations or other related research is conducted; and (3) Ensure that complete data describing the historic property is preserved.

§ 225.25 Resolution of disputes.

A minerals agreement shall contain provisions for resolving disputes that may arise between the parties. However, no such provision shall limit the Secretary's authority or ability to ensure that the rights of an Indian mineral owner are protected in the event of a violation of the provisions of the minerals agreement by any other party to the minerals agreement.

§ 225.26 Auditing and accounting.

The Secretary may conduct audits relating to the scope, nature and extent of compliance with the minerals 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 arising from the provisions of a minerals agreement. Procedures and standards used for accounting and auditing of minerals agreements will be in accordance with audit standards established by the Comptroller General of the United States, in "Standards for Auditing of Governmental Organizations, Programs, Activities, and Functions, 1981," and standards established by the American Institute of Certified Public Accountants.

§ 225.27 Forms and reports.

Any forms required to be filed pursuant to a minerals agreement may be obtained from the Superintendent or Area Director. Prescribed forms for filing geothermal production reports

required by the BLM (43 CFR part 3260, §§ 3264.1, 3264.2–4 and 3264.2–5) may be obtained from the Superintendent, Area Director, or the Authorized Officer. Applicable 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, P.O. Box 5760, Denver, Colorado 80217. Additional reporting requirements may be required by the Secretary.

§ 225.28 Approval of amendments to minerals agreements.

An amendment, modification or supplement to a minerals agreement entered into pursuant to the regulations in this part, whether the minerals agreement was approved before or after the effective date of these regulations, must be approved in writing by all parties before being submitted to the Secretary for approval. The provisions of § 225.22 apply to approvals of amendments, modifications, or supplements to minerals agreements entered into under the regulations in this part. However, amendments, modifications, or supplements that do not substantially alter or affect the factors listed in § 225.22(c), may be approved by referencing materials previously submitted for the initial review and approval of the minerals agreement. The Secretary may approve an amendment, modification, or supplement if it is determined that the underlying minerals agreement, as amended, modified, or supplemented meets the criteria for approval set forth in § 225.22(c).

§ 225.29 Corporate qualifications and requests for information.

(a) The signing in a representative capacity of minerals agreements or assignments, bonds, or other instruments required by a minerals agreement or 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) A prospective corporate operator proposing to acquire an interest in a minerals 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 minerals agreement is situated; and

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

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

§ 225.30 Bonds.

(a) Bonds required by provisions of a minerals agreement should be in an amount sufficient to ensure compliance with all of the requirements of the minerals agreement and the statutes and regulations applicable to the minerals agreement. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a $75,000 bond for all geothermal, mining, or oil and gas minerals agreements in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds shall be filed for approval with the Secretary.

(c) An operator may file a $150,000 bond for full nationwide coverage to cover all geothermal or oil and gas minerals agreements without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds shall be filed for approval with the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the minerals agreement. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a minerals agreement; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose deposits are Federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a minerals agreement.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs on demand, in part or in full, upon receipt by the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the minerals agreement provisions and conditions or failure to file a replacement in accordance with subparagraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

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

(v) A letter of credit used as security for any minerals agreement upon which operations have taken place and final approval for abandonment has not been given, or as security for a statewide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of a bond may be increased in any particular case at the discretion of the Secretary.

§ 225.31 Manner of payments.

Unless specified otherwise in the minerals agreement, after production has been established, all payments due for royalties, bonuses, rentals and other payments under a minerals agreement 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, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the Superintendent or Area Director.

§ 225.32 Permission to start operations.

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of the minerals agreement pursuant to the regulations. After a minerals agreement is approved, written permission to start operations must be secured by applying for the

permits referred to in paragraph (b) of this section.

(b) Applicable permits in accordance with rules and regulations in 30 CFR part 750, 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTL) issued thereunder shall be required before actual operations are conducted on the minerals agreement acreage.

§ 225.33 Assignment of minerals agreements.

An assignment of a minerals agreement, or any interest therein, shall not be valid without the approval of the Secretary and, if required in the minerals agreement, the Indian mineral owner. The assignee must be qualified to hold the minerals agreement and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof as stipulated in the minerals agreement. A fully executed copy of the assignment shall be filed with the Secretary within five (5) working days after execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon submission of satisfactory bonds to the Bureau of Indian Affairs by the assignee, and a determination that the assignor has satisfied all accrued obligations.

§ 225.34 [Reserved]

§ 225.35 Inspection of premises; books and accounts.

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

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

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

(d) Operators shall provide records to the Director's Representative in accordance with OSMRE regulations and guidelines.

§ 225.36 Minerals agreement cancellation; Bureau of Indian Affairs notice of noncompliance.

(a) If the Secretary determines that an operator has failed to comply with the regulations in this part; other applicable laws or regulations; the terms of the minerals agreement; the requirements of an approved exploration, drilling or mining plan; Secretarial orders; or the orders of the Authorized Officer, the Director's Representative, or the MMS Official, the Secretary may:

(1) Serve a notice of noncompliance; or

(2) Serve a notice of proposed cancellation.

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

(c) The notice of proposed cancellation shall set forth the reasons why cancellation is proposed.

(d) The notice of proposed cancellation or noncompliance shall be served upon the operator by delivery in person or by certified mail to the operator at the operator's last known address. When certified mail is used, the date of service shall be deemed to be when received or five (5) working days after the date it is mailed, whichever is earlier.

(e) The operator shall have thirty (30) days (or such longer time as specified in the notice) from the date that the Bureau of Indian Affairs notice of proposed cancellation or noncompliance is served to respond, in writing, to the Superintendent or Area Director actually issuing the notice.

(f) If an operator 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 that does not, in the discretion of the Secretary, adequately justify the operator's failure to comply, then the Secretary may cancel the minerals agreement, specifying the basis for the cancellation. Cancellation of a minerals agreement shall not relieve the operator of any continuing obligation under the minerals agreement.

(g) If an operator fails to take corrective action or to file a timely written response adequately justifying the operator's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation. If the operator fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (k) of this section, the Secretary may issue an order of minerals agreement cancellation.

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

(i) Nothing in this section is intended to limit the authority of the Authorized Officer, the Director's Representative, or the MMS Official to take any enforcement action authorized pursuant to statute or regulation.

(j) The Authorized Officer, the Director's Representative, the MMS Official, and the Superintendent or Area Director should consult with one another before taking any enforcement actions.

(k) If orders of cessation or minerals agreement cancellation issued pursuant to this section are issued by a designee of the Secretary other than the Assistant Secretary for Indian Affairs, the orders may be appealed under 25 CFR part 2. If the orders are issued by the Secretary or the Assistant Secretary for Indian Affairs, and not one of their delegates or subordinates, the orders are the final orders of the Department.

§ 225.37 Penalties.

(a) In addition to or in lieu of cancellation under § 225.36, violations of the terms and conditions of any minerals agreement, the regulations in this part, other applicable laws or regulations, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary may subject an operator to a penalty of not more than $1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the operator either personally or by certified mail to the operator at the operator's last known address. The date of service by certified mail shall be deemed to be the date received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the operator of the operator's right to either request a hearing within thirty (30) days of receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent or Area Director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2. If within thirty (30) days of receipt of the notice of proposed penalty the operator has not requested a hearing or paid the amount of the proposed penalty, a final notice of penalty shall be served.

(d) If the person served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits presented for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the Indian mineral owner and upon submission and acceptance of a bond deemed adequate to indemnify the Indian mineral owner from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment of penalties in full more than ten (10) days after a final decision imposing a penalty shall subject the 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 Secretary. In the absence of a specific minerals agreement 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) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director's Representative, or the MMS Official to impose penalties under applicable statutory or regulatory authorities;

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

(3) Authorizing the imposition of a penalty for violations of minerals agreement provisions for which the Authorized Officer, Director's Representative, or MMS Official has either statutory or regulatory authority to assess a penalty.

§ 225.38 Appeals.

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

§ 225.39 Fees.

(a) Unless otherwise authorized by the Secretary, each minerals agreement or assignment thereof, shall be accompanied by a filing fee of $75.00 at the time of filing.

(b) An Indian mineral owner shall not be required to pay a filing fee if the Indian mineral owner, pursuant to a provision in the existing minerals agreement, acquires an additional interest in that minerals agreement.

§ 225.40 Government employees cannot acquire minerals agreements.

U.S. Government employees are prevented from acquiring any interest(s) in minerals agreements 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.

Dated: January 27, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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