Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule eliminates a single adjustment factor for PHAs that has been rendered inapplicable because of other regulatory changes and HUD does not anticipate a significant economic impact on a substantial number of small entities resulting from this elimination.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule eliminates a single adjustment factor that has become obsolete. The rule does not create any new significant requirements of its own. As a result, the rule is not subject to review under the Order.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule only involves the removal of a single, obsolete adjustment factor for management assessment of PHAs.

List of Subjects in 24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is amended as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

1. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j) and 3535(d).

2. In § 901.10, paragraph (b)(4) is revised to read as follows:

§ 901.10 Indicators.

* * * * *

(b) * * *

(4) *Energy Consumption*. The annual energy consumption. This indicator has a weight of x1.

(i) Grade A: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has not increased.

(ii) Grade B: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has not increased by more than 3%.

(iii) Grade C: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 3% and less than or equal to 5%.

(iv) Grade D: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 5% and less than or equal to 7%.

(v) Grade E: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 7% and less than or equal to 9%.

(vi) Grade F: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 9%.

* * * * *

Dated: June 27, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–17257 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211 and 212

RIN 1076–AA82

Leasing of Tribal Lands for Mineral Development and Leasing of Allotted Lands for Mineral Development

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 revising and updating regulations in 25 CFR Parts 211 and 212 that govern mineral leasing on tribal and allotted Indian lands respectively. The intent of these regulations is to ensure that Indian mineral owners, both tribes and individual owners, desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental or cultural impact resulting from such development. Further, these regulations recognize Federal government reorganization, enacted legislation, and prevailing administrative practice in the 58 years since these regulations were first promulgated.

EFFECTIVE DATE: August 7, 1996.

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

SUPPLEMENTARY INFORMATION: These final rules are published in the exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary for Indian Affairs by 209 DM 8. The principal authors of these rules are Richard N. Wilson and Pete C. Aguilar, both in the Division of Energy and Mineral Resources, Golden, Colorado.

This final rulemaking revises and updates the mineral leasing of tribally-owned minerals governed by the Act of May 11, 1938 (25 U.S.C. 396a), and the mineral leasing of allotted lands governed by the Act of March 3, 1909, as amended, (25 U.S.C. 396). The 1938 Act permits Indian tribes to elect whether they wish to offer their mineral resources for lease by competitive bidding, or enter into negotiations with prospective lessees if bids are not satisfactory. The Act of 1909 permits individual Indian mineral owners to offer their mineral resources for lease by competitive bidding under the aegis of the Secretary.

This is the first comprehensive revision of general BIA regulations governing mineral leasing of Indian lands since 1938. In the intervening period Congress has enacted many laws applicable to Indian mineral leases, including the National Environmental Policy Act of 1969 and the Federal Oil and Gas Royalty Management Act of 1982. There have also been major changes in Federal Indian policy, as reflected in the Indian Self-Determination Act of 1975 and recent amendments thereto. This revision is the product of many years of consultation with Indian tribal leaders. It is intended to update, streamline and clarify the procedures for Indian mineral leasing and administration, consistent with the Federal government's role as trustee for these mineral resources and with the modern Federal policy of self-determination. Indeed, they largely reflect current BIA practice and procedure, and are intended in part to eliminate the confusion often fostered by the existing,

outmoded regulations. Although these revised regulations include new requirements imposed by modern statutes and intervening judicial interpretations of the BIA's legal responsibilities, they are no lengthier than the existing regulations, most of which have been in place for 58 years.

Pursuant to section 8 of the Indian Mineral Development Act (IMDA) of 1982, the BIA published a notice of proposed rulemaking in the Federal Register on July 12, 1983 (48 FR 31978) to revise and reorganize the regulations governing solid mineral, oil and gas, and geothermal leasing adopted pursuant to the Acts of 1909 and 1938, last revised in their entirety on December 24, 1957 (22 FR 10588); as well as to promulgate regulations implementing the IMDA. On August 24, 1987, the BIA published final regulations (52 FR 31916) that 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 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 format of the proposed regulations, implementing the Acts of March 3, 1909 and May 11, 1938, and the IMDA; combined the regulations 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 regulatory format created confusion about contract approval procedures for leasing tribal versus allotted lands. In addition, the format created confusion between regulatory requirements for solid mineral versus fluid mineral contracts. The uncertainty expressed by Indian interests and industry on numerous issues convinced the Department that the regulations needed to be entirely reformatted and revised.

The proposed regulations were then organized under a system that would be more familiar to both Indian mineral owners and industry. The proposed regulations were organized in three parts: (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 part governing minerals agreements for development of Indian minerals under the IMDA.

Along with the reformatting, many changes were made to the individual parts of the regulation. Those 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 intervening years.

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 those regulations should be published as proposed rather than as final rules, 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.

Comments received from Indian mineral owners, industry, and the public were directed mostly to 25 CFR Parts 211 and 212. Tribes were especially concerned that the proposed regulations did not adequately recognize tribal rules and regulations and did not provide for adequate notification and communication with tribes prior to implementation of Departmental decision and authority with respect to mineral leasing and mineral management activities. Industry expressed concern about acreage limitations in the leasing of solid minerals and oil and gas, the role of the regulatory structure of the Department and its effects on the reclamation of Indian lands mined for coal, and were still concerned about the possible effects of the proposed rules on existing mineral leases on Indian lands.

Because there were: (1) regulations formerly in place governing the mineral leasing of Indian lands (25 CFR Parts 211 and 212 as well as the regulations of other Federal agencies); (2) no regulations governing the disposition of mineral resources pursuant to the IMDA; and (3) because the IMDA is and has been utilized by tribes to participate in minerals agreements, since 1982, without benefit of formal regulations designed specifically to implement the IMDA; the Department published separately (25 CFR Part 225, 59 FR 14960, March 30, 1994) as final rulemaking the regulations implementing the IMDA. In response to the wishes and numerous comments of Indian tribes and the public and to ensure that Indian mineral owners and lessees and the general public had adequate and full opportunity for review and comment, the Department determined that the regulations revising and updating 25 CFR Parts 211 and 212 should be published as final rulemaking only after an additional opportunity for review and comment had been provided.

Accordingly, the public comment period was reopened, public meetings scheduled, and additional opportunity provided for concerned and involved parties to further discuss and provide comments, prior to final rulemaking, on 25 CFR Parts 211 and 212 published on November 21, 1991. The comment period was reopened for 60 days by Federal Register notice (57 FR 40298) on September 2, 1992. Public hearings were held at Denver, Colorado on September 25, 1992 and at Albuquerque, New Mexico on September 28, 1992 to receive public comments on 25 CFR Parts 211 and 212 as proposed and published on November 21, 1991. The closing date for submission of comments on proposed rulemaking was November 2, 1992.

In reviewing all of the issues raised in the 1987, 1991 and 1992 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 that 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.

The regulations are rewritten and restructured in response to the comments received during the comment periods of 1991 and 1992. Because of previous extensive reformatting and restructuring in response to comments received in 1987 (56 FR 58735), as well as to comments received in 1991 and

1992, the Department is of the opinion that a detailed review of comments received during a time interval of more than five years would be more confusing than helpful. Accordingly, the Department decided to provide in the preamble a listing by section of the salient changes made in the proposed regulations.

I. Changes Made to Proposed Rules

Set forth in the following list of changes are most of the clarifying changes, but not each and every minor change, made to the regulations since they were last published as proposed in the Federal Register on November 21, 1991. The proposed rules are modified: (1) in response to comments received; (2) to reflect the fact that 25 CFR Parts 211 and 212 now stand alone after separation and subsequent publication of 25 CFR Part 225 (59 FR 14960) as a final rule; and (3) in recognition of prevailing and customary business and administrative practices developed in the last 58 years (since regulations were first promulgated in 1938) under the Acts of 1909 and 1938. The salient modifications to the proposed rules are here summarized by section. Many of the changes and modifications made in 25 CFR Part 212 are the same as those made in 25 CFR Part 211 or the sections are included from 25 CFR Part 211 by reference. The changes and modifications in sections so referenced are the same in both parts. These changes and modifications as well as changes and modifications in common in the text of both parts of regulation are set forth only in the section summaries of Part 211 below, but are easily found because the numbering and designation of sections in Part 212 parallel those of Part 211. Where significant differences exist the sections of Part 212 are discussed separately (below). The section headings refer to this final rule.

Section 211.1. Purpose and Scope

Several changes are made to this section to more clearly state the general guidance of this section and to assure the Alaska native corporations that 25 CFR Parts 211 and 212 are applicable only to Indian mineral interests held in trust by the United States. In addition, a change is made to clarify that 25 CFR Parts 211 and 212 do not affect certain key provisions of existing mineral leases and permits.

Section 211.3. Definitions

The definitions section of Part 211 is modified somewhat, partly in response to comments, because permits are now specifically recognized in regulation, and for other reasons. The necessary changes made are:

Applicant is an addition to clarify that no one is a lessee or permittee does not exist until after the issuance of a lease or permit;

Bureau is deleted from definitions because this word is no longer used specifically without qualification in the regulations;

Cooperative Agreement is added because the term is used in many places in the discussion of agreements that allocate costs and benefits among the operator(s) and the mineral owner(s).

Director's representative is added to bring the Office of Surface Mining Reclamation and Enforcement representative formally into Part 211;

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;

Indian Surface Owner is defined in both Part 211 and Part 212 in response to comments and because this phrase is brought into Part 212 by reference to the appropriate sections of Part 211.

Minerals is modified to better define the scope and description of minerals that may be included in a mineral lease or permit on Indian lands;

Permit is added to recognize that permits, as well as leases, may be issued in the course of exploration and development of mineral resources on Indian lands;

Permittee is added to recognize one who holds a permit as compared to one who holds a lease on Indian land;

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

Section 211.4. 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 211.6. Authority and Responsibility of the Minerals Management Service (MMS)

This section is expanded to clarify that the Secretary may consider alternative provisions in a lease or permit 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 211.7. Environmental Studies

A change is made in this section to clarify that although compliance with all environmental, 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 lease or permit. Rather, the degree and timing of environmental compliance activity demanded at a specific site or area is dependent upon the findings of the environmental analysis or environmental assessment.

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

This section is modified to clarify that permits and leases issued under 43 CFR on certain Federal lands which later became Indian lands, shall be administered in accordance with the regulations set forth in 30 CFR and 43 CFR, as applicable. This section also provides guidance in the making of payments and the submittal of reports for mineral permits and leases.

Section 211.20. Leasing Procedures

Changes are made in this section to emphasize that the Secretary undertakes mineral leasing on Indian lands at the request of, and in consultation with, the Indian mineral owner. Except for oil and gas, and with the approval of the Secretary, the Indian mineral owner and/or the Secretary may engage in private negotiations in pursuit of mineral leasing. After oil and gas lands have been considered for lease by competitive bid, the oil and gas lands may be leased by private negotiation between the Indian mineral owner and the mineral industry, subject to approval of the Secretary.

Section 211.24. Bonds

Changes in this section emphasize that bonds are payable to the Secretary or the Secretary's designee and provide minimum (nationwide and/or statewide bonds) requirements for the bonding of lessees and permittees. 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 can be used to satisfy the bonding requirements.

Section 211.25. Acreage Limitation

As a result of comments, Section 211.25 is rewritten to more nearly reflect current administrative practice. In the previous proposed rulemaking, coal leases were restricted to 640 acres (56 FR 58740). In the final rule the limit is raised to 2,560 acres and may, with the consent of the Indian mineral

owner, be approved in larger acreage. This is similar to the existing regulation. For other minerals each lease may not exceed 640 acres, or the nearest aliquot portion thereof, although multiple leases of 640 acres each may be obtained by lessees. Indian mineral owners and applicants who find the acreage limitations in § 211.25 unduly restrictive may avail themselves of procedures under the IMDA (25 CFR Part 225).

Section 211.27. Duration of Leases

Rewording in this section clarifies the conditions under which a lease may be extended beyond its primary term of lease duration by drilling (oil and gas and geothermal leases) or actual production (solid minerals leases). A provision is added, in the interest of diligent development of oil and gas and geothermal leases, that provides a lease cannot be extended more than 120 days beyond its primary term by drilling activity in the absence of production or an approval of a cooperative agreement.

Section 211.28. Unitization and Communitization Agreements, and Well Spacing

Additions to this section include (1) the requirement that the Secretary consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or a well-spacing plan and (2) a clarification at § 211.28(e) that requests for approval of cooperative agreements, which must be appropriately filed ninety (90) days prior to the expiration date of the first Indian lease to be included in the proposed agreement, apply to all mineral commodities amenable to approval of a cooperative agreement.

Section 211.29. Exemption of Leases and Permits Made by Organized Tribes

At the suggestion of tribal commenters, the regulation currently found in 25 CFR § 211.29, acknowledging that tribal laws may supersede these regulations, has been retained in this final rule. However, for clarification purposes, a proviso has been added, stating that tribal law may not supersede the requirements of Federal statutes governing Indian mineral leasing, for example, the requirement in 25 U.S.C. § 396a that a tribal lease must be approved by the Secretary of the Interior.

Section 211.40. Manner of Payments

The change to this section clarifies the manner of payments and specifically identifies the Secretary's designees to receive payments prior to the establishment of production.

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

The change to this section: (1) raises the minimum annual rental for Indian land to $2.00 per acre in keeping with current practices and rentals for mineral leases on Federal land; (2) clarifies at § 211.41(c) that the Secretary may consider alternative lease or permit provisions to the requirements of 30 CFR Chapter II, Subchapters A and C, if the alternatives are reasonable and adequately address the royalty functions governed by regulations of the Minerals Management Service; and (3) restores the language in regulations formerly in place at § 211.13(b) thus removing the requirement in the proposed regulations (56 FR 58734) that lessor use of gas in excess of lessee's requirements must be provided for in lease provisions.

Section 211.42. Annual Rentals and Expenditures for Development on Leases Other Than Oil and Gas

The changes to this section increase the minimum annual development expenditure to $20.00 per acre and increase the minimum rental to $2.00 per acre in keeping with current rates and rentals for mineral leases on Federal land and to reflect the effects of inflation over the years.

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

Minor changes are made to clarify that the royalty rates specified are only minimums, and that higher rates are allowed without any special approvals.

Section 211.53. Assignments, Overriding Royalties, and Operating Agreements

Changes are made in this section to clarify that: (1) the Indian mineral owner must consent to assignment or transfer of approved leases or any interest therein if such approval of the Indian mineral owner is required in the lease; (2) even if such consent is not required the Secretary shall notify the Indian mineral owner of a proposed assignment; (3) agreements creating overriding royalties or payments out of production or agreements designating operators, although not requiring the approval of the Secretary, are required to be filed with the superintendent and do not relieve the lessee from obligations imposed by the MMS for reporting, accounting, and auditing; and (4) in response to comments, the proposed restrictions concerning assignment of partial interests and assignment of stratigraphic intervals are removed from the regulations.

Section 211.54. Lease or Permit Cancellation; Bureau of Indian Affairs Notice of Noncompliance

Changes to this section include: (1) reorganization of the section in the interests of clarity of procedure in the serving of notices of noncompliance, orders of cessation, notices of cancellation, and orders of cancellation; (2) allowing a permittee or lessee thirty (30) days, rather than twenty (20) days, in which to respond to notices; and (3) clarification, by reorganization and addition of paragraphs, of BIA procedures to be followed in the event of noncompliance and necessary enforcement associated with the cancellation process which includes the option of BIA to issue a notice of non-compliance rather than to immediately start cancellation proceedings.

Section 211.55. Penalties

This section is rewritten with minor changes, including a change in section title, to clarify procedures in the event penalties are imposed on a permittee or lessee. A change is made to formally recognize the authority of the director's representative of the Office of Surface Mining Reclamation and Enforcement to impose penalties and paragraph (f) is rewritten to guard against the imposition of multiple penalties by different Federal agencies for the same violation. A penalties section in the Bureau of Indian Affairs minerals regulations continues to be necessary because the only other remedies available to the Secretary for noncompliance with permit requirements or breach of the lease are cessation of operations or cancellation of the lease, either of which may be seen as extreme measures and may cause harm to the interests of the Indian mineral owner. Also, there are no penalty provisions under any other Federal agency's regulations to provide for enforcement of provisions of a permit or lease which includes solid minerals or other mineral commodities not covered by the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) or the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The new rule also provides more detail on the due process and appeal procedures available to a lessee or operator subject to a penalty assessment, than is found in the existing rule in 25 CFR § 211.22.

Section 211.56. Geological and Geophysical Permits

Change is made in § 211.56(a)(3) to provide for the release of data after six (6) years after receipt by the Federal

Government, if no time limit for the release of data is prescribed in the permit; and to provide that data release is subject to the consent of the Indian mineral owner.

Section 212.20. Leasing Procedures

Changes made in this section emphasize that the Secretary undertakes mineral leasing on Indian lands at the request of the Indian mineral owner and that the lease or permit shall not be approved without the consent of the Indian mineral owner. After the lands have been considered for lease by competitive bid, the Secretary may engage in negotiations, at the request of, and on behalf of the Indian mineral owner, in pursuit of mineral leasing.

Section 212.21. Execution of Leases

Minor changes are made in the wording to clarify under what circumstances the Secretary may execute leases on behalf of the Indian mineral owners. A change has been made to subsection (b), in part to reflect the existence of modern tribal courts, by adding a proviso that the Secretary may exercise this authority only if there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

Section 212.28. Unitization and Communitization Agreements, and Well Spacing

This section, included in Part 212 by reference to Part 211 in proposed rules, is now specifically included in Part 212 in final rules because of necessary minor differences in the unitization and communitization of allotted versus unallotted lands. Clarification is made at § 212.28(e) that requests for approval of a cooperative agreement, that must be appropriately filed ninety (90) days prior to the expiration date of the first Indian lease to be included in the proposed agreement, apply to all mineral commodities amenable to approval of a cooperative agreement.

Section 212.33. Terms Applying After Relinquishment

This section is rewritten with the provision that the lessee may, after lease relinquishment by the Secretary and the revesting of the lessor's title, withhold payment of rental and royalty until all parties agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. The provision that there must be four or more parties entitled to royalties and rentals before withholding is permitted is removed.

Section 212.41. Rentals and Production Royalty on Oil and Gas Leases

Changes in this section (1) raise the minimum annual rental for Indian land to $2.00 per acre in keeping with current practices and rentals for mineral leases on Federal land and (2) clarify at § 212.41(c) that if valuation provisions in the lease are inconsistent with the regulations in 30 CFR Chapter II, Subchapters A and C, the lease provisions shall govern.

Section 212.56. Geological and Geophysical Permits

This section is reorganized in the interests of clarity of presentation and a change is made to proposed § 212.56(a)(3) to provide for the release of data after six (6) years after receipt by the Federal Government, if no time limit for the release of data is prescribed in the permit, and to provide that data release is subject to the discretion of the Secretary.

II. Comments Received on Proposed Rules

The notice of Proposed Rulemaking was published in the Federal Register on November 21, 1991 (56 FR 58734). The proposed rules provided for a 90-day comment period ending on February 19, 1992. The comment period was subsequently reopened (57 FR 40298) on September 2, 1992. Public hearings were held at Denver, Colorado on September 25, 1992 and at Albuquerque, New Mexico on September 28, 1992. The closing date for the submission of comments on proposed rulemaking and the reopened comment period was November 2, 1992. During the two comment periods, 27 commenters submitted written comments and/or oral statements and comments at public hearings. All comments were accepted for consideration in preparation of the final rules and are addressed in this portion of the preamble (Section II). All substantive comments applicable to sections of 25 CFR Parts 211 and 212 were considered with respect to both Parts whether or not the comments were directed to Part 212 specifically.

(1) One commenter states that the title of Part 211 creates some unnecessary confusion by referring to ''Leasing'' of tribal lands; that Part 225 also applies to certain ''leases'' of tribal lands, when negotiated under the IMDA; and that the title to Part 211 would be more accurate if it referred to ''Competitive Bid Leasing'' rather than just ''Leasing.''

Response: References to leasing are mostly removed from 25 CFR Part 225 (published separately in final rulemaking, 59 FR 14960) and efforts made to refer, where at all possible, to the disposition of mineral resources under Part 225 as disposition by minerals agreement. Also, at the request of the Indian mineral owner or in the event of waiver, rejection, or failure of the bidding process, negotiated leases may be issued under Parts 211 and 212. Thus, the present titling of Part 211 is retained without change.

(2) Several commenters stated that sufficient time for review of the proposed regulations was not initially provided and ask for extended review time as well as public hearings at locations convenient to the Indian tribes; and stated that the proposed rules should be subject to a negotiated rule-making process among interested tribes, industry, and the Bureau of Indian Affairs.

Response: As set forth in the introductory remarks (above), the Secretary reopened the period for comment for an additional 60 days and public hearings were held at Denver, Colorado and Albuquerque, New Mexico. Thus, the regulations have been subject to written oral comments twice and all interested parties have been afforded an opportunity to influence the content. Additionally, the regulations are not subject to negotiated rulemaking processes because enacted and codified legislation is not subject to subsequent unilateral negotiation to the exclusion of any concerned party.

(3) One commenter indicates that the purpose of the proposed rulemaking is to make regulations consistent with the regulations governing mineral leasing and development of Federal lands. The commenter states 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 the reformatting and changing of 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 of the Interior are also applicable in the day-to-day management of the mineral estate on Tribal and allotted Indian lands subject to mineral leasing and development under 25 CFR 211 and 212. The commenter is correct that in a number of important respects mineral

leasing and development on Indian lands differ from such activities on Federal lands; in such instances different treatment is required, and the regulations so provide. To the extent that Indian tribes find the Department's leasing regulations generally unuseful, they may wish to enter into minerals agreements under the IMDA (*see* 25 CFR Part 225).

(4) One commenter states that the rules must provide that fixed dollar amounts (in lease provisions), whether in relation to annual rental, bonds, or other fees be indexed for inflation.

Response: Although many fixed costs and charges in these regulations have been increased to offset the inflationary effects since the rules were last revised, no provision is made for indexing costs and charges to reflect the expected decrease in the purchasing power of money in future years. It is doubtful if an index (standard) or method of calculation acceptable to all parties to Indian mineral leasing can be found. Further, the IMDA provides the means by which indexing for inflation can be done for individual mineral properties and minerals agreements.

(5) One commenter states that the Department attempting to ''remove unnecessary regulatory barriers and complications which could make [Indian] minerals less attractive to industry and thus frustrate development'' (56 FR 59735) should be principally addressed by tribes because many of the regulatory barriers and complications exist to protect tribes.

Response: Tribes may address how best to protect their interests in minerals agreements under the IMDA (25 CFR Part 225). Also, provision is made at § 211.29 in final rules for supersedence of Federal regulations by the provisions of any properly issued tribal constitution, bylaw, or charter.

(6) One commenter states that the proposed regulations should be reproposed with coal mining leases and operations addressed by separate regulations specific to coal operations because, as proposed, the regulations would impose an unnecessary and duplicate regulatory burden on coal operations on Indian lands; and further states that coal-specific regulations must avoid creating overlapping and duplicative regulatory requirements and that the mining of minerals other than coal also warrants separate treatment.

Response: The authorization for the leasing of allotted and unallotted Indian lands for mining (including oil and gas) is set forth at 25 U.S.C. § 396 and §§ 396a–396g, in which no provision is made for the promulgation of separate regulations for individual mineral commodities. Although not prohibited, the Secretary is of the opinion that the devising of regulations for the administration of individual mineral commodities occurring in each individual land category would create a costly and unmanageable administrative situation for those engaged in the management of minerals operations and reclamation of disturbed lands. Sections 211.7, 211.24, 211.47, 211.48, 211.51, 211.54, and 211.58 have all been changed to remove the concerns of regulatory overlap and duplication.

(7) Several Alaska Native Regional Corporations ask that language be made in the rules to clarify that the Part 211 Tribal leasing regulations do not apply to lands conveyed pursuant to the Alaska Native Claims Settlement Act of 1971.

Response: Language is added in 25 CFR 211.1(a) to clarify that the rules apply only to lands which the United States holds in trust for the benefit of an Indian tribe, or which are subject to a restriction against alienation imposed by the United States.

(8) Several tribal commenters are in favor of a broader retroactive effect for the proposed regulations. One commenter stated that only the royalty rate should not be subject to retroactive change by the regulations. One industry commenter stated that the regulations should not have any retroactive effect unless agreed to by all parties.

Response: The current regulations in § 211.28 provide for an effective date and state that the current regulations supersede all former regulations. The current regulations then include a proviso, ''That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental or acreage unless agreed to by both parties to the lease.'' This provision has been carried essentially unchanged. No attempt has been made to change this provision that has been in effect for many years and has not led to any problems in interpretation or application. Therefore, no changes were made pursuant to the comments.

(9) Several commenters state that the placement of the provisions of § 211.29, from regulations formerly in place, at proposed § 211.1(c) does not: (1) adequately recognize the regulatory authority of tribes; (2) specifically provide that the proposed regulations may be superseded by the provisions of any tribal constitution, bylaw, or ordinance; nor (3) provide the proper platform for the adoption of tribal bylaws, ordinances, and other measures governing assignments, taxation, and other matters of regulation of the Indian mineral estate.

Response: In response to this and other comments the regulation in 25 CFR § 211.29 has been reinstated in the same place, with minor revisions for clarification purposes. In addition to the tribal regulatory authority recognized in the new Section 211.1(d) (211.1(c) in the proposed rules), Section 211.29 recognizes that tribes may enact laws which supersede these regulations, but not Federal statutes.

(10) One commenter states that many tribes have adopted their own mineral leasing act, which should be noted in the new regulations.

Response: See the response to comment (9).

(11) One commenter is concerned that each part of proposed 25 CFR Parts 211, 212, and 225 have separate sets of definitions and states that only one set of definitions should be used.

Response: The commenter is correct in stating that uniformity of definition is desirable. However, with the decision to separate 25 CFR Parts 211 and 212 from Part 225 (59 FR 14960), more than one set of definitions is required for publication in the Federal Register. Also, the three parts of regulation respond to at least three different sets of empowering legislation over about an 80-year, time span such that differences of definition are unavoidable. Wherever possible terms in the three sets of regulations have the same meaning.

(12) One commenter points out that ''Bureau'' is specified in definition, but not used consistently in the proposed regulations and suggests usage consistent with definition.

Response: We agree. The word ''Bureau'' is removed from definitions and the regulations in favor of usage of the ''Secretary'' or the title(s) of the Secretary's designee.

(13) One commenter states that ''coal'' ought to be defined because it is a referenced mineral in the proposed regulations.

Response: The definition of ''minerals'' includes coal specifically in definition and also by virtue of including metalliferous, non-metalliferous, energy, and non-energy minerals. A definition of ''coal'' is not added in final rulemaking.

(14) One commenter suggests that coal be specifically included in the definition of ''solid minerals.''

Response: Coal is specifically included in the definition of ''minerals'', and by virtue of being a solid is included in the definition of ''solid minerals.'' The definition is unchanged in final rulemaking.

(15) Several commenters are concerned that the definition of ''gas'': (1) may or may not include coal-bed

methane and suggest that methane gas and other ''non-traditional hydrocarbons'' be exempted from definitions of minerals acquired under a traditional mineral lease; and (2) should exclude those substances found in other minerals as a constituent part 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 that the Department of the Interior has taken in litigation. If necessary, distinction among gases of various origin or association may be made by the use of suitable modifiers in lease provisions (e.g., coal-bed methane, natural gas, or carbon-dioxide gas) at the time of advertisement of properties for lease and/or subsequent lease negotiation by principals. Further, the IMDA is available to tribes (and allottees if participating in a minerals agreement under the IMDA) to specifically address in minerals agreements these issues on an individual basis.

(16) One commenter states that the definition of a ''gas'' should make clear the meaning of ''ordinary temperatures 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 and handling of gases and in specified standards for the determination of quantities of materials. The specification of temperature and pressure standards for produced gas(es) are found in the operating regulations of the BLM and the production and valuation regulations of MMS. The specification of a standard, if required, should appear in lease provisions or be specified at the time of lease negotiation.

(17) One commenter suggests that the definition in proposed rules of ''in the best interest of the Indian mineral owner'' be dropped because an adequate and concise definition of this phrase is difficult to compose, although the concept is generally understood.

Response: The final definition includes a partial list of factors to be considered by the Secretary and is consistent with Kenai Oil and Gas, Inc. v. Department of Interior, 671, F.2d 383.

(18) One commenter suggests that the proposed definition of ''in the best interest of the Indian mineral owner'' be changed to require the Secretary to consider any relevant factor in the best interest determination.

Response: We agree. The definition is changed in final rulemaking.

(19) One commenter is concerned that the definition of ''Indian lands'' was included in proposed rulemaking with no explanation in preamble and is different than the definition used by OSM.

Response: The proposed rules state (56 FR 58735) that the definitions section of the regulations is expanded significantly to eliminate ambiguities and questions concerning the meaning of frequently used terms. The definition of ''Indian lands'' used by OSM is found in SMCRA, and is applicable only to the provisions of SMCRA. Indeed, that statutory definition has been the subject of varying interpretations and litigation over its meaning. The definition used in these regulations simply recognizes that Indian-owned lands held in trust or subject to Federal restrictions against alienation are within the purview of the Indian mineral leasing statutes and the Secretary's trust responsibilities.

(20) One commenter suggests that the proposed definition of ''Indian lands'' specifically exclude Alaska Native Regional Corporations which own land or interest in minerals.

Response: Language is added to 25 CFR 211.1(a) to specify those lands to which 25 CFR Part 211 applies, language which excludes lands or mineral interest owned by Alaska Native Regional Corporations.

(21) One commenter objects to confusing syntax in the proposed definition of ''Indian lands'' and suggests that such lands be defined (in part) in terms of ownership by group(s) recognized by the United States as eligible for services from the Bureau of Indian Affairs. Another commenter suggests that in use in regulation the words ''trust or restricted lands'' be changed to ''Indian lands.''

Response: See the response to comment (19).

(22) One commenter questions the need for including lands owned by any individual Indian in the definition of ''Indian lands'' because Part 211 deals exclusively with leasing of tribal lands.

Response: Use of the term ''Indian lands'' in Part 211 is very limited. See Sections 211.9 and 211.22. There the context includes allotted as well as tribal lands.

(23) Several commenters state that ''Indian surface owner'' needs to be defined in rulemaking.

Response: We agree. The phrase ''Indian surface owner'' is defined in both Part 211 and Part 212 because sections of Part 211 are referenced in Part 212.

(24) One commenter suggests that the definition of ''lessee'' imposes diligent development and other operating obligations (as well as the obligation of paying royalty and rental) on a designated royalty payor rather than an operator and suggests the definition be deleted whereas another commenter states that the definition should be broadened to include anyone who has been assigned any rights associated with the lease.

Response: The definition of ''lessee'' in Parts 211 and 212 parallels and supports similar definitions in the operating regulations of both the BLM and the MMS. The MMS definition includes those who have been assigned an obligation to make royalty or other payments as required by the lease. The definition is retained unchanged in final rulemaking.

(25) Several commenters point out that the definition of ''lessee'' should not include those prior to the time a lease is granted.

Response: We agree. The definition is rewritten to reflect that those who have made application for or who are negotiating for a lease are not lessees.

(26) One commenter states that the common mineral varieties should be excluded from the definition of ''minerals'' at § 211.3.

Response: The authority in the Act of May 11, 1938, for the leasing of tribal lands for mining purposes has been interpreted broadly since its enactment. Nothing in the Act suggests that common varieties of minerals should not be included.

(27) Two commenters object to the exclusion of materials from the definition of mining based on the type and volume of material considered for extraction and one questions if the extraction of 5,000 cubic yards of gold and silver bearing material is a non-mining venture.

Response: Common varieties of mineral resources extracted in small amounts are excluded from the definition of mining, especially because the purpose of such extraction is often for local and/or tribal use. However, permits for these small operations are still reviewed and approved at the superintendent's office. Gold and silver are not included in the extraction of small amounts of materials because gold and silver are precious metals and not common mineral varieties. The Indian mineral owner still retains the option of disposing of the common mineral varieties in whatever types and quantities specified by a minerals agreement under the provisions of the IMDA, if desired.

(28) One commenter points out that in proposed rulemaking 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: The definitions of the two Federal agencies are unavoidably different because those at 25 CFR § 211.3 are similar to those used by the Bureau of Land Management in the management of mineral leasing and production whereas the Minerals Management Service definitions are more closely tied to measurement and royalty management concerns.

(29) Three commenters suggest that a definition of ''in paying quantities'' be included in proposed definitions at § 211.3.

Response: The paying quantities determination is made by the Bureau of Land Management after operations commence and production begins. The definition of paying quantities is contained in 43 CFR Part 3160. The definitions of commercial quantities for geothermal resources is in 43 CFR Part 3260 and for coal is in 43 CFR Part 3480. A definition is not needed here, because this responsibility falls to the BLM to determine whether production meets the ''pay quantities'' criteria. Therefore no definition is included.

(30) One commenter suggests that additional definitions be added to § 211.3 including ''primary term'' and ''maximum term'' as used in § 211.27.

Response: The primary term is defined in context when used to describe the duration of a lease. No reference is made to a maximum term of lease duration in final regulation. These definitions are not added in final rulemaking.

(31) One commenter states that the definition of ''tar sands'' is restrictive because it is limited in definition to production by mining or quarrying.

Response: We agree. The definition is not used in regulation and is removed from § 211.3 (and § 212.3) in final rulemaking.

(32) Two commenters feel that in proposed §§ 211.4, 211.5, and 211.6 the authority and responsibility of tribal governments over operations on reservation lands should be explicitly recognized and one believes that with respect to the authority and responsibilities of the various agencies of the U.S. Government, explicit mention of the Government's trust responsibility to Indians should be included in the regulations.

Response: The authority and responsibility of tribal governments is recognized and in these rules at § 211.1(d), at § 211.29, and discussed above (see comment number 9 and in the summary remarks of this preamble). Insofar as the mention of the Secretary's trust responsibility is concerned all Federal agencies must recognize the trust responsibility of the United States when implementing programs for Indians.

(33) One commenter is especially concerned about § 211.5 and states that the regulations should make it clear that coal mining reclamation requirements and procedures have no application to open-pit, hard-rock operations.

Response: Section 211.5 is changed to specifically cite the Code of Federal Regulations governing coal mining and reclamation requirements and procedures.

(34) One commenter states that the regulations of the MMS recognize that Indian lessees must ''dual account'' for gas produced from tribal lands and states that the proposed regulations are silent on this methodology which could be viewed as a retreat from the valuation system that greatly enhances tribal income. Another commenter states that these regulations must expressly state that the trust responsibility requires the Secretary to maximize valuation on Indian lands.

Response: Under FOGRMA and the Department of the Interior Manual, the valuation of production for royalty purposes is a function of the MMS. Thus, the requirements and methodology of valuation are properly set forth in appropriate case law and Title 30 of the CFR in Chapter II, Subchapters A and C, of the MMS rules and regulations. Section 211.6 is rewritten to provide that if parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve such alternate provisions.

(35) Several tribal commenters and many industry commenters raise questions concerning the application of environmental, historic preservation and archaeological protection laws to Indian lands. One tribal commenter states that the National Historic Preservation Act does not apply to Indian lands. Another opposes the application of the National Environmental Protection Act (NEPA) to Indian lands. Industry commenters state that compliance with environmental, archaeological and historic preservation survey requirements is an extremely burdensome, expensive, and unnecessary requirement. Several industry commenters recommend that archaeological surveys be performed after approval of a lease, but prior to approval of any surface disturbing operations.

Response: The National Environmental Protection Act and the other historic preservation and archaeological protection statutes cited in this section apply to Indian lands when activities on those lands are subject to approval by the Federal Government. Therefore, the Department has no discretion to determine whether or not to comply with those laws as they affect mineral leasing on Indian lands. It is also clear that the provisions of NEPA must be complied with at the time of lease approval. It is not possible to defer NEPA compliance until the surface disturbance phase of lease development. However, the prior proposed regulations stated that all historic preservation and archaeological surveys would be performed prior to approval of a lease. It has been determined that this statement may impose a greater burden than is actually required by applicable regulations. Therefore § 211.7 is modified to state that ''the Secretary shall ensure that all clearances and surveys are performed in compliance with these laws * * *.''

(36) One commenter states that the second sentence of § 211.9 should be revised to read that ''Existing mineral prospecting permits, exploration and mining leases on these lands issued prior to these properties being placed in trust status or becoming Indian lands pursuant to 43 CFR * * *.''

Response: We agree. Section 211.9 is rewritten to clarify that such lands, once taken into trust or becoming Indian lands, are no longer treated as public or Federal lands (recognizing pre-existing rights).

(37) Several commenters state that the leasing procedures of proposed § 211.20 are not clear and suggest that the procedures are in need of clarification.

Response: We agree. Section 211.20 is rewritten and recast to clarify procedures and to emphasize the involvement of the Indian mineral owner in the leasing process.

(38) One commenter states that § 211.20 is unclear as to amendments to existing leases and suggests that amendments to 1938 Act leases be negotiated under the 1982 Act (IMDA).

Response: Neither rules formerly in place nor final rules provide a formal regulatory scheme for amendment to existing leases because the amendments are either at the convenience of the parties to the lease or result from lease provisions to open and renegotiate a lease after a specified event occurs. Regardless of the approach to amendment, the resulting terms must be approved by the Secretary, an action

resulting in the issuance of a minerals agreement (25 CFR Part 225), a new lease, or ancillary terms appended to an existing lease; all of which are new leases that must be approved by the Secretary. Provision is made for the amendment of minerals agreements (25 CFR Part 225, 59 FR 14975). Minerals agreements are expected to be the preferred procedure for the amendment of all existing leases and agreements.

(39) One commenter states that potential lessees should be instructed to submit lease applications directly to the Indian mineral owner as well as the superintendent at the time of application.

Response: Submittal of applications to lease to multiple offices is not required in final rules. Rather, the Indian mineral owner shall be promptly notified of the lease application and the leasing alternatives. The course of action to be followed after this notification is then contingent upon the decisions of the Indian mineral owner.

(40) Several tribes comment that the royalty rate and rental as well as bonus should be included as variables in the advertisement of leases for sealed or oral bid, and that the Secretary should not unilaterally set a royalty rate and rental amount in the advertisement.

Response: Comments concerning the need for tribal input are well taken and § 211.20 is modified to require consultation with the Indian mineral owner prior to advertisement. However, the comments requesting that royalty rate and rental be variables in the sealed and oral bid process is not accepted because the procedures can be managed only with great difficulty. Past experience has shown that it is extremely difficult to compare the values of bids that are contingent upon three different variables bid separately. In addition, if an Indian mineral owner desires to receive offers to lease a land parcel or tract, the value of which is determined by the total value of a variety of considerations each of which may be dependent on another, the procedures under the IMDA or, in certain circumstances, negotiation offer flexibility to a Tribe.

(41) One commenter states that there ought to be included in § 211.20 a provision that requires BIA to issue a comprehensive analysis of the potential value of the property being considered for oil and gas development and its potential effect upon reservoir production; otherwise, tribes that do not have independent assessment capabilities will have no way of knowing what the value of properties are before they are submitted for bid.

Response: Mineral inventories and appraisals are conducted by the BLM and BIA, depending upon the resources available. Limited resources make it impossible to appraise every mineral tract prior to leasing. The best readily available measure of mineral worth of an oil and gas tract is likely the fair market value of the tract as revealed by past and present bonus bids for the tract or (if available) nearby similar tracts.

(42) One commenter states that the language of § 211.20(b)(5) indicating the high bidder ''may'' forfeit the required 25 percent of bonus bid should be changed to ''shall'' and that there is no standard to establish when the forfeiture occurs.

Response: We agree. In final rules a standard is specified and the forfeiture is made certain by the use of the word ''shall'' in final rules.

(43) One commenter states that the successful oral bidder should be required to immediately pay 25 percent bonus [bid as] deposit at the time of the auction.

Response: The final rules continue to permit five (5) working days in which the successful oral auction high bidder will be allowed to remit the required 25 percent deposit of the bonus bid. In the event of a spirited auction, the successful high bidder may not have at the place and time of auction the requisite 25 percent of the bonus bid for the deposit.

(44) One commenter states that the required publication of a notice of sale at least thirty (30) days prior to the sale date should be sixty (60) days to give an interested party adequate time to prepare for the sale.

Response: The publication of the advertisement of lease sale thirty (30) days in advance of the sale date is a minimum time interval. The publication of the advertisement of date of lease sale and ancillary information may take place more than thirty (30) days before the sale. This minimum time has for many years proved to be a workable minimum.

(45) Two commenters are of the opinion that the proposed rules allow for competitive bonus bid and negotiated leases at the same time and object to negotiations after the potential lessor has the advantage of evaluating bids received. Further, one commenter states that the results of competitive bidding should be final and the winning bid should be awarded the lease.

Response: As owner of the property to be leased, the Indian mineral owner has wide latitude in the determination of methods of auction and conditions of lease sale. Under the trust responsibility, the Secretary must reserve sufficient latitude to properly discharge that responsibility. Accordingly, there is no provision in final rules for lease sales and lease negotiations to be conducted at the same time for the same land tracts. In the event that the results of a lease sale are not to the liking or not in the best interest of an Indian mineral owner, action must be taken to satisfy the needs and wishes of the potential lessor. Section 211.20 therefore balances concerns of potential lessees and lessors.

(46) One commenter is uncertain why the storage option is granted at 25 CFR § 211.22 and is unsure of what benefit is derived by a lessor when a lessee produces oil and gas, but stores it for future use; and whether or not hydrocarbons not previously produced includes hydrocarbons produced, but stored; and if a lessee may store previously produced minerals indefinitely and thereby hold the lease without payments to the lessor.

Response: The storage option is included at 25 CFR § 211.22 to provide the Indian mineral owner with a mechanism to profitably participate in the demand for surge storage capacity for oil and gas (usually hydrocarbons) by underground storage. Participation is achieved by means of leasing or adjusting existing lease provisions to accommodate produced oil and gas, in existing natural or near natural underground structures (oil and gas traps comprising an oil and gas field) at or near the end of productive life; or those older, produced fields having capacity that can be used to store oil and gas. Payments to Indian mineral owners can be based on metered transfer of oil and gas in and out of the field (structure) that may provide rental in lieu of, or in addition to, royalties deriving from field production. Oil and gas stored may be from the same field or other sources (including pipelines). Usually, provision must be made in royalty, fees, and/or rentals to ensure proper accounting and payment for all oil and gas recovered from storage including quantities in excess of stored amounts and those fluid phases, produced as a result of introduction of stored hydrocarbons (say, residue gas) or other gases, that would not have been produced otherwise. Also, provision must be made in royalty, fees, and/or rentals to pay the Indian mineral owner for the use of the field (trap) for storage purposes. Section 211.22 is unchanged in final rulemaking.

(47) Two commenters representing industry interests recommend the deletion of proposed § 211.23(b) that requires: (1) the filing of a statement

showing a corporate applicant's State of incorporation; (2) that the corporation is authorized to hold interests in property in the State in which the lands are operated; and (3) a notarized statement that the corporation has the power to conduct all business and operations as described in the lease.

Response: The requirements are retained because the information required has been found to be useful to the Department, is not burdensome to industry, and is a standard requirement of long standing for all significant transactions with corporations. Therefore no changes were made in final rules.

(48) Several commenters are concerned that the dollar amounts stated in § 211.24 for bond requirements are inadequate and recommend that bonds be required in amounts sufficient to protect the interests of the Indian mineral owner and the United States.

Response: The final rule balances the high cost of bonds against potential damage to the Indian mineral owner and the United States. Section 211.24 is rewritten to permit the use of personal bonds as surety as well as the customary Statewide and Nationwide bonds and § 211.24(e) provides for increasing bond amounts in any particular case at the discretion of the Secretary. The goal in regulation remains that lessees furnish bond sufficient to ensure compliance with all lease provisions and applicable rules and statutes.

(49) One commenter states that § 211.24 should make provision for bonding to include Federal, State, or fee mineral leases, the surface of which is owned by a tribe or individual Indian, for purposes of surface reclamation as proposed in an approved plan of operation.

Response: The rules in 25 CFR Parts 211 and 212 are concerned with the leasing of minerals on Indian lands. Therefore, the requirements for leasing of Federal, State, and fee minerals must be addressed under other authority, and published elsewhere.

(50) One commenter states that proposed paragraphs 211.24(c) and 211.24(c)(3) are inconsistent in naming the payee.

Response: Although § 211.24 is rewritten the language included in these proposed paragraphs is essentially the same; the payee is the Secretary with the stipulation that the letter of credit is payable to the Bureau of Indian Affairs (the Secretary's designee) upon receipt from the Secretary of a notice of attachment stating the basis thereof.

(51) One commenter states that the Indian mineral owner should be allowed to be named as the payee on a bond.

Response: An Indian mineral owner cannot be named as payee on Statewide or Nationwide bonds which affect more than one Indian mineral owner. In final rulemaking the Secretary remains the payee because, in the discharge of the trust responsibility, the bond must be continually and easily available to defray the cost of abandonment, reclamation and/or provide for payment of royalties, other charges, and fees in the event of default.

(52) One commenter states that the proposed § 211.24(d) should be changed to state explicitly that bonding shall be in an amount satisfactory to the Secretary and the Indian mineral owner or the Indian surface owner, in amounts sufficient to ensure compliance with the requirements of the authorized officer and the Indian mineral owner or the Indian surface owner and shall be available, in the Secretary's discretion, with concurrence by the Indian mineral or surface owner, to satisfy any unpaid debt of the lessee or assignee to the lessor or surface owner.

Response: In situations requiring complex and detailed bonding in response to many and varied interests, the prospective lessor should consider using a minerals agreement under the IMDA (25 CFR Part 225) rather than 25 CFR Part 211.

(53) One commenter points out that no definition is provided for the term ''assignee'' which is used in § 211.24.

Response: The paragraph (a) in § 211.24 is rewritten to clarify the use in context of the word ''assignee.''

(54) Two commenters recommend that proposed paragraph § 211.24(d) be revised to allow the posting of an individual lease bond is some amount not to exceed $5,000 to encourage independent operators to invest and work on Indian land.

Response: The rule at § 211.24 is rewritten in response to comments to provide in final rulemaking the minimal requirements for the bonding (or equivalent surety) of lessees conducting mineral operations on Indian lands such that the Secretary may adequately and timely fulfill the trust responsibility.

(55) Several commenters object to the single section of land (640 acre), lease-size limitation. It is stated that smaller leases would be less attractive to industry because they would be less economic. Other commenters request that the lease-size limitation be subject to variations on a case-by-case basis to allow for irregularities in land sections.

Response: Except for coal, the lease-size limitations remain the same as in the proposed rules. Coal leases have historically been limited to 2,560 acres with due allowances for exceptions to provide for the dedication of sufficient reserves to specific projects (powerplants) to ensure that ventures will not fail for lack of fuel. Additional language is added to § 211.25 to restore the 2,560-acre limitation (with provision for exception) for coal and to provide that the rule of approximation shall apply in the event irregular land sections are included in the leased land blocks as well as provision for lands not surveyed under the United States Governmental survey. Changes to § 211.25 are also made to emphasize that the acquisition and holding of multiple leases (both adjoining and not adjoining) of 640 acres each are not affected by the acreage limitation. In the past, large tracts of Indian land have been held by production from a small portion of a lease and in response to this concern the Department has for three decades restricted the size of offered leases (especially for oil and gas) not to exceed 640 acres or one section, with provision for irregular sections. In addition, the problems raised by commenters may easily be mitigated in several ways: (1) acquisition of multiple leases because there is no limitation on the number of leases a party may enter into; (2) inclusion of multiple leases in a unitization or communitization agreement to allow mineral development on one lease to hold more than one lease; and (3) a party desiring a larger lease may enter into negotiations with an Indian mineral owner to secure a minerals agreement in accordance with the IMDA, under which there is no provision limiting lease acreage. Finally, acreage limitations will have no retroactive effect, and so will not reduce the acreage of any current lease.

(56) One industry commenter states that the 10-year limitation on the term of any minerals lease is insufficient to permit development into production, especially for a surface coal mining operation. The commenter recommends that the 20-year time period provided in the Mineral Leasing Act of 1920, for Federal lands, be used instead. The commenter further recommends that the regulations should prevent tribes from entering into leases for periods of less than 10 years.

Response: The Indian Mineral Leasing Act of 1938, that governs leasing of tribal lands, provides a statutory 10-year limit (25 U.S.C. § 396a) with exceptions for the primary term of lease duration. This limitation is statutory and may not be waived by the parties to a lease, or altered by the Department by regulations. As an alternative, the IMDA

does not limit the time period for development and therefore, may be for any time period negotiated by the parties.

(57) One commenter believes that a primary lease term should be determined by the commodity leased, together with a term maximum, say oil and gas leases not to exceed 3 years, solid minerals other than coal not to exceed 5 years, coal not to exceed 10 years, and no lease to exceed a 20-year maximum unless agreed to between the Indian mineral owner and the lessee.

Response: Although permitted by statute, the primary term of lease duration is not specified in final rules as a result of commodity considerations. If the specific mineral commodity is regarded as a critical factor in the determination of lease duration, then this factor may be set forth at the time of advertisement of lease sale, negotiated, or the lease provisions may be determined in minerals agreements, under the IMDA (25 CFR Part 225), by the Indian mineral owner and a prospective lessee.

(58) One tribal commenter points out that some leases impose a maximum ultimate term [of lease duration] of twenty (20) to thirty (30) years. Therefore, the commenter recommends that the regulations include a provision that would defer to specific lease terms on this point.

Response: In any instance where specific lease provisions do not conflict with statutory authorities, or do not prevent the Department from exercising its trust responsibilities, the Indian mineral owners are free to negotiate specific lease provisions of their choosing. In this particular instance the limitation of lease duration by the provisions of lease is entirely appropriate. Therefore, the comment is accepted and a change was made to clarify this point.

(59) One commenter states that commencement clauses (beyond the primary lease term) should not be permitted because such clauses permit oil companies to do nothing until the last day of the primary term, and then begin drilling. Another commenter believes the proposed regulations governing the primary-term commencement clauses works contrary to the actual intent of a primary term and believes § 211.27(b) should be changed. Two commenters recommend the inclusion of the commencement clause at § 211.27 and state that a duration of extension should be included in this section and one states that a continuous drilling clause should be included.

Response: A review of comments indicate that the possibility that this provision would allow lessees to extend leases for an inordinate time period is highly unlikely. Most current leases limit the primary term of lease duration to 3 to 5 years. An extension of this term (duration) while active drilling takes place is an appropriate extension of the lease and accords with standard business practice. However, to ensure that lessees do not abuse this provision, a 120-day limitation has been added in response to concerns of Indian mineral owners. A drilling clause without limitation could extend, by mere drilling that fails to result in production, the primary term of lease duration.

(60) One commenter states that when read literally, the first sentence of § 211.27(a) is inconsistent with the provision for the suspension of operations at § 211.44.

Response: Section 211.44 makes provision for the suspension of operations on a lease after the primary term. The paragraph at § 211.27(a) speaks to the primary term of lease duration.

(61) Several commenters state that the regulations should require tribal consent to any communitization or unitization agreement whether or not such consent is required in the lease. One commenter states that the consent of the mineral owner is seldom required for the communitization of an Indian lease, and in the commenter's view, is unnecessary.

Response: Every tribal lease executed under the Indian Mineral Leasing Act of 1938 contains the following provision or a similar provision:

> Unit Operation—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

This provision grants the consent of the tribe to cooperative agreements provided they are reviewed and approved by the Secretary. The Department does not intend to attempt to amend this lease provision through these regulations. Instead, the Department affirms that Indian mineral owners may require consent in any future leases or lease amendments. The Department believes that this remains the most equitable method of handling this issue. However, in response to tribal concerns, a provision has been added at § 211.28 requiring the Department to consult with the Indian mineral owner prior to making a determination concerning an operating, unitization, or communitization agreement or well spacing plan. This will ensure that the Indian mineral owner has an opportunity to bring any relevant information concerning the proposal to the Secretary's attention prior to any cooperative action or well spacing plan being undertaken.

(62) Two commenters state that an affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent and/or area director has an address should satisfy the requirement that all Indian mineral owners will be notified by the lessee at the time a cooperative agreement is submitted to the superintendent and/or area director.

Response: We agree. Section 211.28(d) is changed in response to this comment.

(63) One commenter states that the Secretary shall approve well spacing programs, in the context of unit agreements and that it is not clear why the regulations single out well spacing in this context for Secretarial approval. Another commenter states that the well spacing program should be approved by the Secretary and the Indian mineral owner.

Response: The paragraph in § 211.28(h) is rewritten to provide that the well spacing program is subject to the approval of the authorized officer under the operating rules of the Bureau of Land Management. Provision is made at § 211.28(b) for consultation with the Indian mineral owner before approval of a well spacing plan.

(64) One commenter states that provision for lease segregation at § 211.28(g) should be included at § 211.28(f) as a specific ''Pugh Clause.'' Such a clause provides that the effect of production constructively obtained through communitization is restricted to lands that are communitized and does not extend to other leases or to any other leased lands outside the communitized area. Another commenter states that § 211.28(g) should be deleted entirely because it provides a pugh clause in leases that are already reduced in size when issued and that segregation should only occur when the lands are partially included in Federal field-wide units. Another commenter states that provision for segregation will clearly discourage leasing and exploration activity on tribal lands.

Response: The segregation clause contained in § 211.28(g) is intended to ensure diligent development of Indian lands. If portions of a lease are not included in a communitization agreement, or within a producing or exploratory cooperative unit then there is no reason why the excluded lease

portion should be held by the unit agreement to the disadvantage of the Indian mineral owner and perhaps of no particular advantage to the lessee, regardless of whether partially within an entire field or mining district or only a portion of an entire field or just within a mining unit. Further, the segregation provision must be applicable to the lease portions both within and excluded from an exploratory or productive unit for any mineral commodity and not satisfy only the pugh clause requirements with respect to an area communitized for gas and oil.

(65) One commenter states that well spacing is governed by state oil and gas regulations and that there is no reason for the Secretary to become involved in well spacing issues.

Response: Each State issues well spacing orders that are commonly, but not necessarily, accepted as a spacing standard within the State or area in question. However, States have no authority to regulate well spacing on Indian land. The Secretary, in consultation with the Indian mineral owner, has exclusive authority with respect to the spacing of wells, as reflected in § 211.28(h).

(66) One commenter states that § 211.28 should be expanded to permit unitization or communitization of hard rock mineral leases and expresses concern about efficiency of operation in exploiting an ore body in two or more sections of land.

Response: We agree. Although § 211.28 is not greatly changed from proposed rules, provision is made for the commenter's concern by stating in final rules that a cooperative unit or other development plan means an agreement to develop a specifically designated area without regard to ownership of the land included in the agreement.

(67) Several commenters ask that various time deadlines be imposed on the superintendent or area director to review and approve or reject cooperative agreements. One commenter requests that agreements submitted after the 90 day deadline be reviewed in the discretion of the superintendent or area director.

Response: Review of these requests for a time limitation for Departmental review of proposed cooperative agreements, indicates that the issues raised in individual agreements and the problems posed in individual cases vary so widely that it was not advisable to specify a set time frame for review. However, the 90 day time period specified in the regulations in effect imposes such a limitation. Cooperative agreements submitted after the 90 day deadline will be considered by the Department, but the lessee bears the risk that leases may expire prior to the Department being able to take action to approve the agreement.

(68) One commenter states that the existing lock-box arrangement for receipt of monies is working well and another suggests that it be stated in § 211.40 that current lock-box arrangements are not to be affected.

Response: Present lock-box arrangements for the receipt of monies are not affected by § 211.40. The final regulations merely provide for the continuation of existing and standard procedures for the receipt and handling of bonus, rent, and royalty payments.

(69) One commenter suggests that proposed § 211.40 be modified to allow lease provisions and Federal regulations to be superseded by tribal regulation and another states that the regulation should expressly authorize the Secretary to designate the tribe or the tribe's fiscal agent as the payee.

Response: Section 211.40 is rewritten to clarify that unless otherwise specifically provided for in a lease all payments after production has been established shall be made to the MMS or such other party as may be designated, and that prior to production all bonus and rental payments shall be made to the superintendent or area director. Present payment arrangements may be modified by tribal notification to the Minerals Management Service prior to the modification. All payments after production has been established are regulated in 30 CFR Chapter II, Subchapters A and C. Supersedence of Federal regulations is addressed in final rules at § 211.29.

(70) One commenter points out that proposed § 211.40 is inconsistent in identifying where payments should be made and states that payments should be made to the BIA and MMS unless otherwise provided for in lease terms.

Response: We agree. Section 211.40 is rewritten to clarify where and when all payments are to be made. Also, after production has been established the payee may modify the manner of payment in accordance with 30 CFR Chapter II, Subchapters A and C.

(71) One tribal commenter requests that the minimum rental be increased from $1.25 per acre to $10.00 per acre with a consumer price index adjustment clause. Two industry commenters object that in the proposed regulations rentals are not credited against production royalties.

Response: The minimum rental specified in final regulations is $2.00 per acre, an increase of $0.75 per acre from the current rate. This increases the rental to that presently being imposed for Federal lands leased for oil and gas, which is a standard rate throughout the industry. It is clearly stated in final regulations that the rental will be controlled by the provisions negotiated in a lease. Any Indian mineral owner who wishes to make provision for higher rental and/or adjustments as a hedge against inflation in a lease is free to do so for leases or lease provisions which are negotiated. In such cases, whether or not the rentals are credited against production royalty is entirely up to the parties. Where a lease is silent on this issue, the rentals must be paid in addition to royalties. Therefore, further changes are not made in § 211.41(a).

(72) One tribal commenter states that the minimum royalty be set at 20 percent and others do not object to the 16⅔ percent minimum royalty. Several industry commenters state that the proposed 16⅔ percent minimum royalty is too high and may place Indian minerals at a competitive disadvantage.

Response: The 16⅔ percent royalty proposed in the regulations is a minimum royalty that may be raised upon agreement of the parties to a lease, or which may be reduced upon agreement of the parties and the findings of the Department that a lower rate is in the best interest of the Indian mineral owner. Although industry has objected to the increased rates this change merely brings the rates in line with general practice on Indian lands. For over twenty years the standard royalty rate for all leases on Indian lands has been 16⅔ percent or higher. The change in the regulations will not cause any significant change in leasing procedures on Indian lands. It will not retroactively affect any current leases, and will not require applicants for Indian leases to agree to this royalty rate against their will. The minimum royalty simply requires the parties to submit a good reason why a lower royalty rate is necessary before it may be approved by the Department. This helps to ensure that the Secretary exercises his responsibility to protect trust resources.

(73) Several tribes comment that the regulations should contain provisions concerning valuation of production and other accounting issues. They are concerned that reference to the MMS regulations in 30 CFR Chapter II, Subchapters A and C, will not be sufficient to clarify that the lease provisions concerning valuation issues shall govern in the event that lease provisions are inconsistent with MMS's regulations.

Response: The valuation provisions contained in current 25 CFR § 211.13 were included in the regulations prior to

the creation of the MMS. It is appropriate, now that authority for valuation issues has been given to the MMS, that the BIA leasing regulations defer to the much more detailed treatment of this subject in the MMS regulations. However, in response to tribal concerns a sentence is added to final § 211.41(c) to clarify that the specific provisions of a lease on this issue shall govern where those provisions are inconsistent with the MMS regulations.

(74) One tribe comments that Indian mineral owners should be allowed to use gas which is in excess of the lessees needs for any purpose rather than be limited to use of excess gas for schools or other tribal buildings. Two industry commenters object to this provision and ask that it be removed entirely or that the use of excess gas for tribal buildings be treated as a taking of royalty-in-kind.

Response: The provision in the current 25 CFR § 211.13(b), which is carried over to final rules at 25 CFR § 211.41(d), provides for a reasonable and limited use of excess gas by the lessor. This provision has been included in the regulations for at least 30 years. In addition, many current leases contain a specific provision allowing such use, and all current leases contain a provision adopting regulations in effect at the time of the lease. This means that virtually all current tribal leases are subject to this provision. Also, in the many years that this provision has been either included in the leases specifically or by reference to the regulations, we know of no instance where the right to use excess gas has been abused. Therefore this section is amended to incorporate the language in § 211.13(b) of the current regulations as being clearer than the proposed language. Thus, no change is effected in final rules.

(75) One commenter states that both the annual rental and the expenditure for development on leases other than oil and gas, and geothermal resources should be not less than $10.00 per acre and should be escalated annually based on the CPI [Consumer Price Index] for all urban consumers.

Response: In § 211.14 formerly in place the minimum annual rental is fixed at $1.00 per acre and the minimum annual expenditure at $10.00 per acre unless otherwise authorized by the Secretary. These minimum payments and expenditures have not been changed in many years and thus do not reflect the effects of inflation. In final rules at § 211.42 the minimum annual rental is fixed at $2.00 per acre and the minimum annual expenditure at $20.00 per acre, but with no provision for the expected future decline in purchasing power of money. It is not likely that a satisfactory index or method can be identified. In those situations where escalation of payments and expenditures is an issue, the prospective lessors may, however include indexing in minerals agreements under the IMDA (25 CFR Part 225).

(76) One tribal commenter states that the value of production removed and sold from the lease should be established FOB at the mine rather than at the nearest shipping point as proposed at § 211.43. Another commenter states that the proposed rule would affect their sales (but did not elaborate) and urged deletion of specific commodities from this section.

Response: The wording of 25 CFR § 211.43(a) stating the 10 percent minimum royalty ''at the nearest shipping point'' is the same as that in regulations formerly in place at § 211.15. In those instances where the point of valuation is an issue or that § 211.43 is not appropriate, as written, to a specific mineral commodity the Indian mineral owner may wish to negotiate the royalty provisions or conclude a minerals agreement under the IMDA (25 CFR Part 225). Section 211.43(a) is essentially unchanged in the final rules.

(77) Two commenters indicate that certain royalty rates and royalty provisions at § 211.43 for minerals other than oil and gas are not sufficient and state that: (1) the royalty rate for byproducts from geothermal resources should not be less than 10 percent of the value of the byproducts; (2) a lower royalty rate should only be granted with the consent of the Indian mineral owner; (3) a lower royalty rate may be allowed, but not to exceed 5 years, after which the royalty rate should be adjusted upward; and (4) that this section should be revised to take into account potential unconventional means for developing coal resources, e.g., where a processed product is made out of coal, the royalty rate should be 12½ percent of the processed product, not 12½ percent of the value of what is removed.

Response: Special lease conditions and provisions for certain mineral commodities, and special and/or new technologies are best negotiated under the IMDA (25 CFR Part 225). Under Parts 211 and 212 a lower royalty rate may be approved only if it is in the best interest of the Indian mineral owner. This determination will require a higher level of analysis to assure that the tribe is receiving adequate consideration. Thus, a minimum royalty rate should provide no barrier to mineral development. Tribes and industry are required to justify proposed lower royalty rates for leases on a case-by-case basis.

(78) One commenter states that as noted in the proposed rules (56 FR 58736) the BIA for the first time is proposing minimum royalty rates for minerals other than oil and gas with no explanation of the reasons for imposing these minimum royalty rates and urges the BIA to withdraw the minimum royalty provisions.

Response: In current regulations at § 211.15 minimum royalty rates for minerals other than oil and gas are set forth, and have been contained in regulations since 1957. The preamble of the proposed regulations (56 FR 58736), stating that a new section would provide, for the first time, minimum royalty rates for minerals other than oil and gas, was in error.

(79) One commenter states that the proposed rules (§ 211.43(b)) allow a lower royalty rate if it is determined to be in the best interest of the Indian mineral owner but that no valid criteria are established for implementing this term [in the best interest of the Indian mineral owner]. The commenter states further that the lessee has no assurance that a lower rate can be obtained in the event that he proves that a minable deposit exists that cannot profitably be mined at the rate set by regulation and that this could have a negative effect on mineral development under Indian leases.

Response: The criteria implementing the best interest determination are set forth at proposed § 211.3 (56 FR 58738). Minor change in § 211.3 is made in the final rules to require the Secretary to consider any relevant factor in the best interest determination. Special assurances that lower royalty rates can be obtained by a lessor or lessee, cast in a scenario of expected or possible future events, are best sought by negotiation of a minerals agreement under the IMDA (25 CFR Part 225).

(80) Some industry commenters object to the minimum royalty rates in proposed § 211.43 as being too high and one commenter states that 5 percent or less of net smelter returns has long been the royalty standard for base and precious metals under leases of fee simple mineral land and suggests that the regulations should allow minimum royalties more in line with market rates or should establish a royalty formula which will accommodate variances in mineral quality and quantity, mining costs, recovery rates, and the like.

Response: In the event that minimum royalty rates, as set forth in the

proposed and/or final § 211.43, are judged to be too high by the prospective parties to a minerals lease, the parties should consider negotiating an IMDA minerals agreement. Similarly, if risk sharing or royalty adjustment provisions in lease or minerals agreement instruments are contemplated, then the parties should consider negotiation rather than competitive bidding. In the final regulations, the minimum royalties for the competitive acquisition of leases from Indian mineral owners are brought into line with those prevailing on Federal lands (not fee lands). In view of the negotiation alternatives, available under both the Indian Mineral Leasing Act of 1938 and the IMDA, no further changes to § 211.43 are made.

(81) One commenter is of the opinion that proposed § 211.44 requires tribal consent to suspension of operations whereas several other commenters are concerned that suspension of operations for remedial purposes by the Secretary (§ 211.44(a)) does not require the consent of the Indian mineral owner; and another commenter states that the proposed rule would allow an operator to suspend operations without the consent of the Indian mineral owner and should not be permitted.

Response: The suspension of operations provision at § 211.44 is applicable only to leases after expiration of the primary term of lease duration and in no way affects the prerogatives of the Indian mineral owner during the primary term. Section 211.44(a) provides the Secretary the necessary latitude to act, under such provisions and conditions as may be required, in the discharge of the trust responsibility in those instances where all else has failed and remedial measures are required, usually at once, for continued production, protection of the resource, or protection of the environment. Provision is made at § 211.44(b), for mineral properties capable of production after expiration of the primary term of lease duration, such that suspension of operations requires the consent of the Indian mineral owner.

(82) One commenter states that suspension of operations should: (1) never exceed the maximum lease term; (2) require the consent of the Indian mineral owner if the suspension is longer than 90 days; and (3) result in lease cancellation if an application for suspension of operations is denied and the operator [be held] responsible for all abandonment requirements. Another commenter states that: (1) a time period for accomplishment of remedial operations is absolutely necessary; (2) the regulations should expressly define the conditions under which suspension of operations is necessary; and (3) if suspension of operations is necessary, then the Department's current policy requiring reinstatement of production within 30 days should apply.

Response: Numerous provisions and conditions could be added to § 211.44, but are best dealt with on a case-by-case basis by the Secretary.

(83) One commenter states that § 211.44(b) has to do with suspension of operations for non-physical reasons whereas with respect to non-economic or non-marketing reasons, no tribal consent is required for suspension of operations after expiration of the primary term and there is no statutory distinction that justifies requiring tribal consent in one case but not the other.

Response: We see no way of readily or reasonably separating the subtle cause and effect of physical versus non-physical reasons for situations leading to a suspension of operations or production. In the event remedial measures are required in the proper and timely discharge of the trust responsibility and in the best interest of the Indian mineral owner, the Secretary has no choice but to take requisite remedial measures. Provision is made at § 211.44(b) for the parties to the lease to make application for permission to suspend operations on a lease capable of production after expiration of the primary term of lease duration.

(84) One commenter recommends that the extended term be referred to as either ''after expiration of the primary term of the lease'' or as ''in the extended term of the lease'' and not both.

Response: We agree. Although both phrases mean the same thing, meaning that portion of the duration of the lease, when the lease is held by production beyond the primary term of the lease. The primary lease term cannot exceed 10 years. Section 211.44 is changed so that only one phrase is used.

(85) Two commenters state that they do not understand why in proposed rules that the suspension of operations necessary for remedial operations must be approved by the Assistant Secretary and that this matter is best left to the authority of the agency office.

Response: The final regulations are changed to clarify that the suspension of operations is at the discretion of the Secretary, although the suspension action will likely be issued by the authorized officer for § 211.44(a) and for § 211.44(b) by the area director or superintendent, under authority delegated by the Secretary.

(86) One commenter states that proposed § 211.44(a) makes reference to minimum royalty requirements but finds no minimum royalty requirement in the proposed regulations.

Response: The final regulations are clarified to provide that suspension of operations or production after expiration of the primary term of lease duration shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(87) One commenter states that proposed § 211.46 should make clear to whom the books and records will be made available.

Response: Section 211.46 is modified to provide that lessees shall allow the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purposes of inspection and audit, that lessees shall keep a full and correct account of all operations as required by the lease and applicable regulations, and that books and records shall be made available during regular business hours.

(88) One commenter states that clarification should be added under § 211.46 to indicate that under the FOGRMA of 1982 a lessee is required only to maintain records of this type for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records *and* that such records must be maintained for a longer period.

Response: Record keeping requirements are set forth in the operating regulations of BLM, MMS, and OSM which are included by reference at §§ 211.4, 211.5, and 211.6.

(89) One tribal commenter signifies that proposed § 211.47 be expanded to include protection of all Indian lands from drainage, whether leased or not. Another tribal commenter states that the burden falls on the Tribe to prove that additional development of leased lands is required by the prudent operator standard. One industry commenter states that no compensatory royalties should be assessed if ''the superintendent has denied approval of a cooperative agreement for any reason.''

Response: These regulations only concern the leasing of tribal lands, and the requirements which are properly placed on lessees. These regulations do not properly include provisions for dealing with drainage from unleased lands. However, the standard that will be applied to lessees as concerns the leased land is clear. Lessees are required, among other requirements to exercise diligence in mining, drilling and operating wells, protect the lease from drainage. This standard imposes an affirmative duty on the lessee. No

changes in response to these tribal comments were made. Also, no changes were made in response to the industry comment seeking relief from the compensatory royalty provision in § 211.47(b). A proposed cooperative agreement may properly be rejected by the Department when such proposed agreement fails to protect the lease. If an inappropriate cooperative agreement has been rejected by the Department, the rejection should not serve to relieve the lessee from the lessee's obligations under the lease.

(90) One tribal commenter requests that the 200 feet setback requirement for well pads and operations be increased to a minimum of 500 feet.

Response: The proposed section merely carries forward the limitation contained in current § 211.19. Because the current regulation provides a minimum setback requirement, a tribe may negotiate for a greater setback whenever it deems this to be necessary. Also a greater setback may be requested by the authorized officer prior to issuance of permission to drill. For these reasons no change is made at § 211.47(f) in final regulations.

(91) One commenter advises that proposed § 211.47(j) be revised to provide that the lessee pay the surface owner or tenant all damages, including damages to crops, buildings, other improvements of the surface owner occasioned by the lessee's operations as determined by the Secretary with the consent of the Indian mineral owner.

Response: No change is made in § 211.47 in the final regulations because the suggested change would create rights that would not be authorized in law.

(92) One industry commenter states that proposed § 211.47(i) gives the superintendent sole authority to establish the payment due the Indian tribe or allottee for surface damages and expresses the opinion that this should be a matter of negotiation, or based on an independent appraisal with at most, approval of the superintendent.

Response: Authority for the determination of payment of damages to the surface owner is retained by the Secretary, who may employ a BIA appraiser in the decision making process, in this instance the superintendent, for those situations in which the mineral and surface estates have been separated and/or surface damages are at issue.

(93) One industry commenter objects to the provision that written permission must be secured from the Secretary before any operations are started on the leased premises.

Response: The applicable operating and reclamation regulations administered by the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement require prior approval for drilling or mining operations. Therefore, the only change made in this paragraph is to the authorities cited to include the Office of Surface Mining Reclamation and Enforcement. The intent of this paragraph is to alert the mineral industry that a mineral lease issued by an Indian mineral owner, still requires the approval of the Secretary. After the lease is approved, lessees are still required to secure written permission (written approval) from the appropriate agency or agencies before beginning any operations on the lease.

(94) A tribal commenter feels that § 211.48 should be amended to include the need for written permission of the Indian mineral owner before operations are started and that after permission is secured, operation must also be in accordance with all operating rules and regulations promulgated by the Secretary or the Indian mineral owner.

Response: Indian mineral owners are always consulted prior to final approval of any activity involving Indian mineral lands, if it is an action or activity that requires approval or consultation with the Indian mineral owner.

(95) Two industry commenters object to § 211.49 stating that the broad and vague language could be used to restrict or preclude a lessee from developing a lease. Both commenters suggest that any necessary restrictions be spelled out in the lease.

Response: This section carries into final rules § 211.21(a) of regulations currently in place. This provision has been contained in the Department's regulations for many years. The authority stated in this section has rarely been used, and to our knowledge, has never been used to preclude development of a lease. The section is necessary to ensure that the Secretary has the ability to fulfill the fiduciary duty to protect the trust resource.

(96) One commenter objects that proposed § 211.51 does not explicitly address the option of surrender of an operating oil and gas property to the tribe, but rather appears to be confined to lease surrenders after which all production ceases.

Response: There is no barrier in either proposed or final regulations to a request to surrender an operating property to an Indian mineral owner, subject to approval of the Secretary. There is a requirement in proposed and final regulations that the lessee discharge all lease obligations upon surrender, as required.

(97) Several commenters state that the requirement in proposed § 211.51(d) that the original lease documents be delivered to the Department with the request to surrender is not supported by any reason and imposes an additional administrative burden without providing any benefit.

Response: The requirement that the original lease documents be surrendered is intended, to the extent possible, to prevent any confusion as to the extent and location of lands that are leased. Additionally, surrender will prevent fraudulent assignments. This requirement has been in the Department's regulations for several decades (see § 211.27(b)(6)). Also, it is standard industry practice to require surrender of the documents. Because it is standard industry practice the requirement does not impose an additional burden on lessees.

(98) One tribal commenter questions whether this section is sufficient to ensure that all reclamation be performed in an environmentally sound manner.

Response: Section 211.51 requires that the leased land be left in an environmentally sound condition and that all environmental work, such as reclamation, be done. Changes are made in final regulations to paragraph (h) to avoid any possible conflict with this requirement.

(99) Two industry commenters seek qualification to the paragraph in this section requiring the lessee to pay for all drainage which occurs prior to acceptance of surrender of the lease. One commenter states that it is unreasonable to permit liability for compensatory royalty to continue to accrue after filing an application to surrender. One commenter asks that a provision be added to excuse the lessee from payment of compensatory royalties for drainage if a cooperative agreement has been denied ''for any reason'' by the Department.

Response: The provisions contained in proposed § 211.51(g) are an updated version of the current requirement found in § 211.27(b)(10). An addition to the proposed regulations is an explicit reference to compensatory royalties for drainage. Neither of the proposed changes are included in final regulations because they could permit unacceptable actions on the part of the lessee. First, it may be necessary and reasonable for the Department to assess compensatory royalties for waste or drainage, if lack of diligence or poor workmanship on the lease continues to cause the lessor damage after the date of surrender. For instance, if a lessee has

missed the opportunity to enter into a cooperative agreement, and then seeks immediately to surrender the lease, the lessor may not be able to prevent drainage immediately. The lessee may not avoid liability for the drainage by attempting to surrender the lease. Similarly, the fact that a lessee at one time submitted a cooperative agreement for approval will not relieve the lessee from responsibilities under the regulations and lease provisions. The authority reserved to the Secretary in final regulations is to ''impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owner.'' If however, the lessee believes that provisions imposed are arbitrary or capricious, then the lessee may appeal under 25 CFR Part 2. We feel that these procedures provide adequate protection to lessees.

(100) Three industry commenters object to the increase in filing fees in proposed § 211.52, by stating that the increase is unjustified and imposes an additional burden on a struggling industry.

Response: For over four decades the BIA did not raise filing fees. The increase from $10.00 to $75.00 reflects inflation that has occurred during four decades and is in keeping with the current filing fees of the Bureau of Land Management, which increased the filing fees to $75.00 on December 22, 1987. However, surrender of leases no longer must be accompanied by a filing fee, because most standard mineral leases specify a surrender fee.

(101) Both tribes and industry comment that assignments of stratigraphic horizons or intervals should be permitted. Tribes and industry indicate that this practice is common within the industry and would provide economic benefits to the Indian mineral owner.

Response: In final regulations the provisions in proposed rules at § 211.53(a) that prohibit such assignments are removed. Assignment of stratigraphic thicknesses or intervals is permitted.

(102) One commenter states that § 211.53 should be revised so that the broad definition of ''assignment'' that is implied in the § 211.26(b), formerly in place, is retained.

Response: Proposed § 211.53 is rewritten to be more nearly compatible with § 211.26 formerly in place and retain the existing and widely understood concept of an assignment in current use with respect to Indian mineral leases.

(103) Three commenters state that overrides and production payments may render prudent economic development, or otherwise economic operations and proposals uneconomic or prematurely uneconomic. One commenter recommends that both the Secretary and the Indian mineral owner approve overrides, production payments, and operating agreements; one commenter recommends that overrides, production payments, and operating agreements require approval; one commenter states that at a minimum overriding royalties and operating agreements should be forwarded to the Secretary for review.

Response: The creation of overrides, production payments, and use of operating agreements have been standard business practices in the minerals industry for many years and often serve as the necessary economic incentive for the development of, and subsequent production from, mineral properties, especially for oil and gas. Commenters concerns are valid that under some conditions (e.g. a sudden decline in value of the mineral product) mineral properties can be burdened by overrides and production payments. In response to the concerns of commenters, provision is made in final regulation that the Indian mineral owner shall be notified of proposed assignments and agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent. In those instances where the overrides, production payments, and operating agreements are of concern to the Indian mineral owner during the leasing process, the prospective lessors and lessees may wish to arrive at a minerals agreement under the IMDA (25 CFR Part 225).

(104) Four tribal commenters state that the approval or consent of the Indian mineral owner should be required for all assignments; one, if required by lease or by tribal law; another, if any instrument or agreement either makes a present conveyance of an interest in the minerals or obligates one party to convey an interest in the minerals to another party upon performance of some condition; a third, regardless of whether the right of approval is retained in the lease document; and a fourth, would require approval of the Indian mineral owner for all actions regardless of whether the lease requires such approval. One industry commenter states that the language of proposed § 211.53 is appropriate but not consistent with the various tribal ordinances applicable to oil and gas leases; another perceives that proposed § 211.53 is a restatement of current regulatory practice and that new regulations should place no greater restriction on the lessee than currently exists.

Response: Section 211.53 is rewritten in language more nearly resembling 25 CFR Part 211 and 212 formerly in place and is therefore more familiar to both Indian mineral owners and prospective lessees. There is no consensus or general agreement among Indian mineral owners and/or industry upon the conditions of approval of assignments and related agreements. Therefore, final regulations provide for a broad right of assignment of an approved lease for Indian owned minerals, so long as there is no change in the material provisions of the lease. Final regulations are applicable to existing and future leases issued under the Act of May 11, 1938 (25 U.S.C. 396a) and the Act of March 3, 1909 (25 U.S.C. 396). Indian mineral owners that wish to require consent may, under the IMDA, or by negotiated, individual (not necessarily standard) lease provisions under the Act of May 11, 1938; either of which allow the Indian mineral owner to specify the provisions under which owner consent and/or approval would be required for lease assignments, overriding royalties, and operating agreements.

(105) One industry commenter objects to proposed lease cancellation and notice of non-compliance provisions (§ 211.54) on the grounds these provisions would allow the Bureau of Indian Affairs (BIA), to ''assume responsibility for enforcement not only of the provisions of the IMDA, but of other laws and regulations as well.'' The commenter objects to the idea that the BIA might interfere with the authorities which SMCRA vests with the Secretary, who acts through the Office of Surface Mining Reclamation and Enforcement (OSM).

Response: Nothing in this section is intended to interfere with the authority of OSM to administer SMCRA. Section 211.54 is a continuation of the cancellation provision in current 25 CFR § 211.27(a) but includes more due process procedures to protect lessees, and provides the Department with the new option of issuing a notice of non-compliance rather than threatening lease cancellation for any and all offenses, no matter how minor. This section applies to leases issued under the Act of May 11, 1938 (25 U.S.C. 396a). These regulations neither govern IMDA agreements nor purport to govern the type of activities governed by SMCRA. However, it should be clearly understood that violations of SMCRA can also be violations of the lease which, in turn, could lead to cancellation of the lease. Only the BIA,

pursuant to these regulations, has authority to cancel the lease itself. Therefore, § 211.54 does not provide the BIA with authority that overlaps over the authority of OSM.

(106) One tribal commenter asks that a procedure be added for tribes to report any non-compliance which they may observe.

Response: Because of the close working relationship between the tribes and the BIA agency and area offices, it has been determined that a formal regulatory procedure for tribes to share lease compliance information with the BIA is not necessary. Information of any type and in any format from tribes concerning lease compliance by lessees is always welcomed by the Department.

(107) One tribal commenter asks that tribes be granted a larger independent right to cancel a lease for non-compliance.

Response: The request for tribal authority to cancel leases is not included in final regulations. The mineral lease approved by the Secretary concerns lands which the Department has a statutory obligation to protect. The Secretary will review any and all information an Indian mineral owner may have concerning whether or not a lease should be cancelled but the final decision to cancel must remain with the Secretary: See *Yavapai-Prescott Indian Tribe* v. *Watt*, 707 F.2d 1072 (9th Cir. 1983), cert. denied 464 U.S. 1017.

(108) One tribal commenter asks that a time limit be imposed on the Secretary to issue a decision with regard to a lease cancellation.

Response: The request for a time limit for issuance of a decision on cancellation of a lease is not included in final regulations. The factors to be considered and the unique nature of most lease cancellation actions makes a time deadline for action by the Secretary inappropriate.

(109) One tribal commenter suggests that proposed § 211.54(a) be expanded to include the enabling of the noncompliance and cancellation processes in the event the Secretary determines that a lessee or permittee has failed to comply with applicable tribal laws and regulations, and mining or reclamation plans.

Response: Section 211.54(a) is rewritten in the interest of simplification and to clarify that § 211.54 is enabled in the event of noncompliance with lease provisions, these regulations, or other applicable rules and regulations. Although BLM and OSM are primarily responsible under those agencies' regulations for enforcement of mining and reclamation plans, under some circumstances it may be appropriate for BIA officials to issue notices of non-compliance for violations of such plans. Tribal administrative and judicial remedies will often be the appropriate means for redressing violations of tribal laws and regulations. But the revised language of this regulation leaves open the possibility of enforcement under this Part when an alleged violation raises mixed issues of Federal and tribal law.

(110) One commenter suggests that service by certified mail should be deemed to occur seven (7) rather than five (5) days after the date of mailing (in both §§ 211.54 and 211.55) to be consistent with MMS regulations regarding constructive service of official correspondence.

Response: In the interest of consistency the date of service is deemed to be five (5) working days after the date of mailing in final regulations.

(111) One commenter states that in proposed § 211.54 there is no provision for a hearing before the Secretary prior to lease cancellation and that denial of the right to a hearing is the denial of the right to due process that exists in present regulations and that this right should be restored.

Response: Section 211.54 is rewritten in final regulations to clarify noncompliance and cancellation procedures. Final regulations provide lessees and permittees adequate time for response to notices of noncompliance, orders of cessation, and notices of proposed cancellation or of cancellation. Hearings may be requested in the responses of lessees and permittees to notices and orders and the rights of lessees and permittees under 25 CFR Part 2 (§ 211.58) are not abridged. The suggested provisions are not included at § 211.54.

(112) One commenter states that in proposed § 211.54 reference is made to an ''order of cessation'' and it is not clear what an order of cessation is or how it differs from a notice of noncompliance. Another commenter states that BIA does not define a ''cessation order.''

Response: Section 211.54 is rewritten in final regulations to clarify noncompliance and cancellation procedures.

(113) Several industry commenters object to proposed § 211.55 and request that it be removed for a number of reasons. First, several commenters challenge the authority of the Department to impose civil penalties. Second, the $1,000.00 per day limit is challenged as unduly high. Finally, even though the commenters maintain that the Secretary lacks authority to impose civil penalties, the commenters object to the civil penalties as duplicative of other civil penalties which the Secretary has authority to impose.

Response: The proposed civil penalties provision is not new. The current regulations contain § 211.22 that provides for a $500.00 per day civil penalty for violations of terms of the lease, regulations or orders. Section 211.22 has been contained in the leasing regulations for unallotted lands for many years. The proposed revisions to this section do two things. First, the dollar limit for a violation is updated to accord with current penalty limits contained in other Departmental regulations (see 43 CFR § 3162 and § 3163.2). In fact this dollar figure is conservative when compared to the $5,000.00 per violation per day limit contained in the Bureau of Land Management's regulations. The second change provides lessees and permittees with additional due process procedures to ensure that no penalty is unfairly imposed. The Department believes that the broad authority granted to the President by Congress to regulate Indian affairs (see 25 U.S.C. §§ 2 and 9), the longstanding administrative interpretation of these statutes as granting authority to assess penalties, and the unique responsibilities imposed on the Secretary to protect Indian trust resources support this section. However, in response to industry comments a provision has been added to this section in final rules to clarify that no penalty may be assessed under this section for a violation over which the BLM, OSM, or MMS have either statutory or regulatory authority to assess a penalty. This will ensure that this section does not duplicate any other penalty provision and that no duplicative penalties will be issued.

(114) Five industry commenters express concern that the language in proposed § 211.56 is not adequate to protect the rights of the data owner and more specifically that there are no requirements on the part of the Indian mineral owner to protect the confidentiality of the data provided to them. Three Indian commenters felt that the proposed regulation is too weak, because it does not provide specifically for submittal of collected data to the Indian mineral owner.

Response: The concern regarding the lack of confidentiality requirements on the part of the Indian mineral owner is best considered at the time of negotiation between the Indian mineral owner and the proponent of the permit. Therefore, no specific change is made in final regulation with respect to this item. Section 211.56 is rewritten to

reflect the major concerns of the commenters and provides that copies of collected data shall be forwarded to the Indian mineral owner, unless otherwise provided in the permit.

(115) One industry commenter expresses concern that seismic option agreements are not covered in proposed regulation.

Response: The comment regarding seismic option agreements is not considered because it is deemed that such agreements are best concluded as minerals agreements under the provisions of the IMDA (25 CFR Part 225).

(116) One of the Indian commenters requests that the regulations provide for the issuance of geological and geophysical permits by the Indian mineral owner to university students. The same commenter proposes that all collected data be submitted to the Indian mineral owner, who in turn will provide it to the Secretary and also recommends that the phrase that allows a permittee to take samples for assay and experimental purposes be deleted.

Response: The recommendation that issuance of geological and geophysical permits to universities be addressed in final regulations is not included in final regulations because such requests should be considered on a case-by-case basis by the Indian mineral owner, who has the option of requesting assistance from the Secretary if consideration of such permits pose problems in approval. The related recommendation for deletion from § 211.56(b) of the provision for the taking of assay samples for experimental purposes is also not included because, at times, the taking of experimental assay samples can be of benefit to the Indian mineral owner.

(117) One industry commenter recommends that ''Indian owner'' in § 211.56(a) be changed to ''Indian mineral owner'' in order to distinguish between the Indian surface owner and the Indian mineral owner. The same commenter recommends that the word ''shall'' rather than ''may'' (§ 211.56(c)) be used in regard to the Secretary's responsibility to maintain for a reasonable period of time the confidentiality of data submitted.

Response: The words ''Indian owner'' are changed to ''Indian mineral owner'' to aid in distinction between the Indian mineral owner and the Indian surface owner. Language in this section is unchanged in that the Secretary ''may'' release information after six (6) years, with the consent of the Indian mineral owner if no time period for release is prescribed in the permit. The word ''may'' is retained in the final regulations because the six years is a minimum time period for information retention. It may not be in the best interest of the Indian mineral owner to release information after the prescribed retention period.

(118) One commenter states that the definition of Indian lands in § 212.3 should be limited to lands owned by any individual Indian or Alaska native. Otherwise there is no substantive provision in the regulations in Part 212 which limits their applicability to allotted lands.

Response: The Secretary does not lease Indian lands without the consent of the individual Indian mineral owner(s), and thus does not unilaterally execute a lease for the individual Indian mineral owner, except as provided in § 212.21. Successors in title to approved and issued mineral leases follow without respect to these regulations. No change is made in the final rules.

(119) One commenter states that the definition of a lessor should be changed to read that a lessor is an Indian mineral owner who has accepted or consented to a lease or for whom the Secretary has executed a lease, and any successor in title to an original lessor.

Response: The Secretary does not lease Indian mineral lands without the consent of the individual Indian mineral owner(s), and thus does not unilaterally execute a lease for the individual Indian mineral owner, except as provided by specific statutory exceptions which allow the Secretary to lease allotted lands when the allottee has died and his heirs are undetermined or when the owner cannot be located. Successors in title to approved and issued mineral leases follow without respect to these regulations. No change is made in the final rules.

(120) One commenter states that to receive optimal benefit for the Indian landowner, royalty rates should be considered in the bidding process.

Response: Royalty rates are considered in the bidding process in the announcement of lease sale. Royalty bidding is not customarily included in either written or oral bidding because of the difficulty in determining the total value of bid based on multiple variables of say, total value of bonus bid, plus rental bid, plus royalty bid, or any combination thereof. Royalty rates may be considered or reconsidered separately if the lease is subsequently negotiated on behalf of the Indian mineral owner.

(121) One tribal commenter recommends an addition to proposed § 212.20 to provide that prior to negotiation for lease, a mineral property must be listed but not successfully won in the most recent lease sale of no later than the preceding 12-month period.

Response: Section 212.20 is rewritten to provide that the option in leasing procedures be decided by the Indian mineral owner. In the event that the leasing option cannot be determined by the Indian mineral owner(s) the Secretary will act on their behalf, and in the best interest of the Indian mineral owner(s).

(122) One tribal commenter suggests that proposed § 212.20 be modified to provide that if an offer to lease a mineral property is made, and no tribal property exists within the same section or spacing order, and given the approval of the Indian mineral owner, or the majority of owners; the BIA or the Indian mineral owners themselves be able to negotiate a lease agreement, subject to approval of the Secretary.

Response: The suggested modifications to § 212.20 place a great many restrictions on the leasing procedures. The required consent of all Indian mineral owners to the leasing of mineral lands composed of both tribal and individual mineral ownership could adversely affect all owners if difficulty is experienced in reaching a consensus. Thus, the suggested modifications are not made in final regulations. However, provision is made in final regulations at § 212.20 that the Indian mineral owner be advised of the results of bidding and that the lease shall not be approved until the consent of the Indian mineral owner has been obtained.

(123) One commenter suggests that a sentence be added to proposed § 212.20(b)(5) to provide that the Secretary shall not disperse any bonus money to the Indian mineral owner(s) until such time as the lease has been signed by the Indian mineral owner(s) unless otherwise agreed to by the successful bidder.

Response: Bonus monies are not dispensed until the lease is issued. Money received is placed in a special account at the BIA area or agency where it is retained until a lease number can be assigned; whereupon money is distributed after the lease is signed and a number assigned to the lease instrument.

(124) One commenter states that the language of proposed § 212.20(a) should be the same as that in proposed § 211.20(a) providing the same superintendent is meant at both places, otherwise, guidance as to the appropriate superintendent should be given.

Response: We agree. Change is made in the final regulations such that both paragraphs now include a reference to

the superintendent having jurisdiction over the lands, because the same superintendent is the same in both instances.

(125) One commenter suggests changes in § 212.30 (a) and (b) to restrict references to lessors and lessees to the mineral interest only and that there does not appear to be any good reason for relieving [from the supervision of the Secretary] the unrestricted land of an existing lease.

Response: Changes are not made in response to this comment because the references in these paragraphs are to the unrestricted owners and not to the owners under restriction. Protection for the lessee existing prior to the removal of restriction are contained in § 212.30(b) which provides that the Supervision of the Secretary shall continue until adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. The unrestricted lands must be relieved from the Supervision of the Secretary because the removal of restriction also removes the authority of the Secretary.

(126) One commenter states that the 30-day notice to lessee and lessor in proposed § 212.33(a) is not adequate for the lessee to prepare title opinions in order to timely and properly pay rentals and royalties and suggests that a 120-day notice is appropriate unless a shorter period is agreed to by the parties [to the lease instrument].

Response: The 30-day notice to principals in the event the Secretary relinquishes supervision during the life of a mineral lease instrument is standard and has been in the present regulations (§ 212.29) for many years without causing difficulty. No change is made in the final regulations.

(127) One commenter points out that the word ''fee'' is used in a dual sense in § 212.33 and suggests that distinction be made between monetary fees and fee simple title and also suggests other changes in this section in the interest of clarity.

Response: We agree. § 212.33(b) is rewritten in final regulation to clarify and simplify the provisions of this section.

(128) One commenter states that § 212.56(c) should be amended to state specifically that the subject section is applicable to allotted lands only.

Response: The title of 25 CFR Part 212 states that these regulations are applicable to the leasing of allotted lands for mineral development and full explanation of the purpose and scope of Parts 211 and 212 are contained in §§ 211.1 and 212.1 and to considerable extent in preamble. This paragraph, although redesignated, remains unchanged.

(129) One commenter states that the use of the words ''surface occupant'' in proposed § 212.56(c) be changed to ''surface owner.'' Otherwise the lessee may be in the position of not knowing who to negotiate with, the surface occupant or the surface owner.

Response: The lessee may have to negotiate with both the surface occupant and the surface owner depending upon land use (e.g., row crops during the growing season on leased surface) and provisions of the surface lease between the surface lessor and surface lessee. The surface occupant is oftentimes the individual easiest to find. This section is unchanged in final rules.

(130) One commenter states that proposed § 212.56 should be revised to make clear that the consent of the Indian surface owner is not required by these regulations and that the consent referred to in proposed paragraph (c) is required only if made ''necessary'' by some other applicable law.

Response: Section 212.56 in final regulations provides that where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant. This information is provided to lessees so that the lessee will know that under some conditions a mineral lease does not automatically authorize surface ingress and egress.

III. Conclusion

The scope and purpose of these final rules are to revise, streamline and update implementation of the Act of May 11, 1938, as amended, and the Act of March 3, 1909, as amended, that provide for the leasing of Indian tribal and allotted lands, respectively, for mineral development. By means of these final rules, the Department provides, within statutory limitations, increased communication between the Indian mineral owner and the Secretary and provides the Indian mineral owner greater recognition and authority in the mineral leasing of Indian lands within the framework of the Secretary's trust responsibility and the determination of the best interest of the Indian mineral owner. The Department understands the concerns and importance to tribes of the recognition of tribal authority and responsibility in matters of the management generally of their own mineral resources. This authority and responsibility are recognized at §§ 211.1 and 211.29 in final rules. Section 211.29 specifically permits the supersedence of Federal regulations by the provisions of ordinance, resolution, or other action authorized under any properly issued tribal constitution, bylaw, or charter. Superseding provisions that: (1) nullify the provisions of enacted legislation or judicial decision that preclude the exercise of tribal authority; (2) modify the provisions of an existing lease or permit which constitute substantially the consideration of the lease or permit, or without which the lease or permit would not have been made; or (3) provide for a regulatory taking cannot be approved by the Secretary. Also, the rules formerly in place have not been revised in entirety since 1938 and therefore the action of the Department, in this revision, reflects in final regulation the enactment of legislation, court decisions, evolution of usual and common business and administrative practices, and changes and reorganizations within the Federal government that has taken place during the last 58 years.

Executive Order No. 12866 and Regulatory Flexibility Act

These rules have been reviewed under Executive Order 12866. In addition, the Department of the Interior has determined that these rules 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. This rulemaking will increase the filing fee (from $10.00 to $75.00) that must accompany each application for lease, permit, or 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. The minimum rental for mineral leases on Indian land will be increased from $1.25 to $2.00 per acre which is no different from the minimum rentals imposed on lessees of Federal minerals. The minimum annual development expenditure on leases other than oil and gas and geothermal resources will increase from $10.00 to $20.00 per acre. The increases in minimum rental and annual development expenditure reflect

the effects of inflation during the last several years on the cost of doing business, helps ensure diligent development of the Indian mineral estate, and helps to protect the Indian mineral owner against the decline through time in purchasing power of dollars received from the Indian mineral leases. These rules promote economic growth by providing tribes and individual Indian mineral owners greater opportunity to negotiate or participate in the negotiation of leases and permits that 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 that might not be otherwise available.

Executive Order No. 12612

The Department has determined that these rules do not have significant federalism effects. These rules support 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 these rules do not have significant takings implications.

Executive Order No. 12988

The Department has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b) (2) of Executive Order No. 12988.

National Environmental Policy Act of 1969

The changes made in this final rulemaking are for the purpose of streamlining and updating the regulations implementing the Act of May 11, 1938, as amended, and the Act of March 3, 1909, as amended. These rules constitute an administrative action and do not impact on the physical environment. The approval of mineral leases, permits, and assignments 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 previously proposed rulemaking that 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 previously 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

This rule is exempt from the information collections requirement under the Paperwork Reduction Act, Pub. L. 95–511 (44 U.S.C. 3501 et seq.).

List of Subjects in 25 CFR Parts 211 and 212

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

Words of Issuance

For the reasons set out in the preamble, Parts 211 and 212 of Title 25, Chapter I of the Code of Federal Regulations are revised as set forth below.

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

Subpart A—General

Sec.

Subpart B—How To Acquire Leases

Subpart C—Rents, Royalties, Cancellations and Appeals

Authority: Sec. 4, Act of May 11, 1938, (52 Stat. 347): Act of August 1, 1956 (70 Stat. 774): 25 U.S.C. 396a-g; and 25 U.S.C. 2 and 9.

Subpart A—General

§ 211.1 Purpose and scope.

(a) The regulations in this part govern leases and permits for the development of Indian tribal oil and gas, geothermal, and solid mineral resources except as provided under paragraph (e) of this section. These regulations are applicable to lands or interests in lands 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 desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

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

(d) Nothing in the regulations in this part is intended to prevent Indian tribes

from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

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

§ 211.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 211.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indians Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

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 in this part and in 43 CFR Parts 3160, 3180, 3260, 3280, 3480 and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

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

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

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

Geothermal resources means:

(1) All products of geothermal processes, 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 an administrative action affecting the interests of an Indian mineral owner. In considering whether it is ''in the best interest of the Indian mineral owner'' to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns land or interests in the 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 mineral owner means an Indian tribe, band, nation, pueblo community, rancheria, colony, or other tribal group which owns mineral interests in oil and gas, geothermal or solid mineral resources, 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 Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract approved by the United States under the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorizes exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity that has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

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

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

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

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

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

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

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

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

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas

Unit Agreements: Unproven Area, 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; and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, apply to leases and permits approved under this part.

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

The OSM 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 coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases approved under this part.

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

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which, apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 211.7 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ), found in 40 CFR parts 1500 through 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, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 through 1975 Comp., p. 559). 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;

(3) Ensure that appropriate excavations or other related research is conducted and ensure that complete data describing the historic property is preserved.

§ 211.8 Government employees cannot acquire leases.

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

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

(a) Title to the minerals underlying certain Federal lands, which were previously subject to general leasing and mining laws, is now held in trust by the United States for Indian tribes. Existing mineral prospecting permits, exploration and mining leases on these lands, issued prior to these lands being placed in trust status or becoming Indian lands, pursuant to 43 CFR chapter II (and its predecessor regulations), and all actions on the permits and leases shall be administered by the Secretary in accordance with the regulations set forth in 30 CFR chapters II and VII and 43 CFR chapter II, as applicable, provided, that all payment or reports required by a non-producing lease or permit, issued pursuant to 43 CFR chapter II, shall be made to the superintendent having administrative jurisdiction over the land involved, instead of the officer of the Bureau of Land Management designated in 43 CFR unless specifically stated otherwise in the statutes authorizing the United States to hold the land in trust for an Indian tribe. Producing lease payments and reports will be submitted to the Minerals Management Service in accordance with 30 CFR chapter II, subchapters A and C.

(b) Administrative actions regarding an existing lease or permit under this section, may be appealed pursuant to 25 CFR part 2.

Subpart B—How to Acquire Leases

§ 211.20 Leasing procedures.

(a) Indian mineral owners may, with the approval of the superintendent or area director, lease their land for mining purposes. No oil and gas lease shall be approved unless it has first been offered for bidding at an advertised lease sale in accordance with this section. Leases for minerals other than oil and gas shall be advertised for bids as prescribed in this section unless the Secretary grants the Indian mineral owners written permission to negotiate for lease. Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request that the Secretary prepare and advertise or negotiate (if the requirements of this section have been met) mineral leases on their behalf. If requested by an applicant interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner, and advise the owner in writing of the alternatives available, including the right to decline to lease. If the Indian mineral owner decides to have the leases advertised, the Secretary shall consult with the Indian mineral owner concerning the appropriate royalty rate and rental. The Secretary may then undertake the responsibility to advertise and lease in accordance with the following procedures:

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

(2) The advertisement shall offer the tracts to the responsible bidder offering the highest bonus. The Secretary, after consultation with the Indian mineral owner, shall establish the rental and

royalty rates which shall be stated in the advertisement and shall not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by the Indian mineral owner is required.

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

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

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

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

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

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

§ 211.21 [Reserved]

§ 211.22 Leases for subsurface storage of oil or gas.

(a) The Secretary, with the consent of the Indian mineral owners, may approve storage leases, or modifications, amendments, or extensions of existing leases, on Indian lands to provide for the subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage lease, or modification, amendment, or extension to an existing lease, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

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

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

§ 211.23 Corporate qualifications and requests for information.

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

(b) A corporate applicant proposing to acquire an interest in a permit or lease shall have on file with the superintendent or area director a statement showing:

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

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

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

§ 211.24 Bonds.

(a) The lessee, permittee or prospective lessee acquiring a lease, or any interest therein, by assignment shall furnish with each lease, permit or assignment a surety bond or personal bond in an amount sufficient to ensure compliance with all of the terms and conditions of the lease(s), permit(s), or assignment(s) and the statutes and regulations applicable to the lease, permit, or assignment. 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 leases, permits, or assignments in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds are subject to approval in the discretion of the Secretary.

(c) An operator may file a $150,000 bond for full nationwide coverage to cover all geothermal or oil and gas leases, permits, or assignments without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds are subject to approval in the discretion of 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 lease or permit. 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 lease or permit; 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 lease or permit.

(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 upon demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the lease or permit provisions and conditions or failure to file a replacement in accordance with paragraph (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 lease or permit 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 bonds may be increased in any particular case at the discretion of the Secretary.

§ 211.25 Acreage limitation.

A lessee may acquire more than one lease but no single lease shall be granted for mineral leasing purposes on Indian tribal or restricted lands in excess of the following acreage except where the rule of approximation applies:

(a) Leases for oil and gas and all other minerals except coal are to be contained within one United States Governmental survey section of land and shall be described by legal subdivisions including lots or tract equivalents not to exceed 640 acres; in instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof;

(b) Leases for coal shall ordinarily be limited to 2,560 acres in a reasonably compact form and shall be described by legal subdivisions including lots or tract equivalents. In instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof. The Secretary may, upon application and with the consent of the Indian mineral owner, approve the issuance of a single lease for more than 2,560 acres, in a reasonably compact form, upon a finding that the issuance is in the best interest of the lessor.

§ 211.26 [Reserved]

§ 211.27 Duration of leases.

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

(b) An oil and gas or geothermal resource lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration (''commencement clause'') if drilling operations have commenced during the primary term, shall be valid and shall hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has commenced actual drilling by midnight of the last day of the primary term of the lease with a drilling rig designed to reach the total proposed depth, and drilling is continued with reasonable diligence until the well is completed to production or abandoned. However, in no case shall such drilling hold the lease longer than 120 days past the primary term of lease duration without actual production of oil, gas, or geothermal resources. *Provided,* that this extension does not allow a lease to continue past the 10-year statutory limitation. Drilling which meets the requirements of this section and occurs within a unit or communitization agreement to which the lease is committed shall be considered as if it occurs on the leasehold itself. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

(c) A solid minerals lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration if mining operations have commenced during the primary term (commencement clause), shall be valid and hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has by midnight of the last day of the primary term of the lease commenced actual removal of mineral materials intended for sale and upon which royalties will be paid. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

§ 211.28 Unitization and communitization agreements, and well spacing.

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

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease. However, the Secretary shall consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or well spacing plan.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

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

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

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

§ 211.29 Exemption of leases and permits made by organized tribes.

The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362,258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501–509), or by ordinance, resolution, or other action authorized under such constitution, bylaw or charter; Provided, that such tribal law may not supersede the requirements of Federal statutes applicable to Indian mineral leases. The regulations in this part, in so far as they are not so superseded, shall apply to leases and permits made by organized tribes if the validity of the lease or permit depends upon the approval of the Secretary of the Interior.

Subpart C—Rents, Royalties, Cancellations and Appeals

§ 211.40 Manner of payments.

Unless otherwise specifically provided for in a lease, once production has been established, all payments shall be made to the MMS 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.

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

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of $2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16–⅔ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and by the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

(d) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

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

(a) Unless otherwise authorized by the Secretary, a lease for minerals other than oil, gas and geothermal resources shall provide for a yearly development expenditure of not less than $20 per acre. All such leases shall provide for a rental payment of not less than $2.00 for each acre or fraction of an acre payable on or before the first day of each lease year.

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

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

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

(1) For substances other than coal, the royalty rate shall be 10 percent of the value of production produced and sold from the lease at the nearest shipping point.

(2) For coal to be strip or open pit mined the royalty rate shall be 12½ percent of the value of production produced and sold from the lease, and for coal removed from an underground mine, the royalty rate shall be 8 percent of the value of production produced and sold from the lease.

(3) For geothermal resources, the royalty rate shall be 10 percent of the amount or value of steam, or any other form of heat or energy derived from production of geothermal resources under the lease and sold or utilized by the lessee. In addition, the royalty rate shall be 5 percent of the value of any byproduct derived from production of geothermal resources under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that the royalty for any mineral byproduct shall be governed by the appropriate paragraph of this section.

(b) A lower royalty rate shall be allowed if it is determined to be in the best interest of the Indian mineral owner. Approval of a lower rate may only be granted by the area director if the approving official is the superintendent or by the Assistant Secretary for Indian Affairs, if the approving official is the area director.

§ 211.44 Suspension of operations.

(a) After the expiration of the primary term of the lease the Secretary may approve suspension of operations for remedial purposes which are necessary for continued production, to protect the resource, the environment, or for other good reasons. *Provided,* that such remedial operations are conducted in accordance with 43 CFR part 3160, subpart 3165 and under such stipulations and conditions as may be prescribed by the Secretary and are conducted with reasonable diligence. Any suspension shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

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

and as such, shall be subject to review and approval by the Secretary.

§ 211.45 [Reserved]

§ 211.46 Inspection of premises, books and accounts.

Lessees shall allow the Indian mineral owner, the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purpose of inspection and audit. Lessees shall keep a full and correct account of all operations and submit all related reports required by the lease and applicable regulations. Books and records shall be available for inspection during regular business hours.

§ 211.47 Diligence, drainage and prevention of waste.

The lessee shall:

(a) Exercise diligence in mining, drilling and operating wells on the leased lands while minerals production can be secured in paying quantities;

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

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

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

(e) Securely plug all wells and effectively shut off all water from the oil or gas-bearing strata before abandoning them;

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

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

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

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

§ 211.48 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 a mineral lease or permit pursuant to the regulations in this part.

(b) After a lease or permit is approved, written permission must be secured from the Secretary before any operations are started on the leased premises, in accordance with applicable rules and regulations in 25 CFR part 216; 30 CFR chapter II, subchapters A and C; 30 CFR part 750 (Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands), 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTLs) issued thereunder.

§ 211.49 Restrictions on operations.

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

§ 211.50 [Reserved]

§ 211.51 Surrender of leases.

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

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

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

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

(d) If a lessee requests to surrender an entire lease or an entire undivided portion of a lease document, the lessee must deliver to the superintendent or area director the original lease documents; *Provided*, that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must deliver to the superintendent or area director only its copy of the assignment;

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

(f) No part of any advance rental shall be refunded to the lessee, nor shall any subsequent surrender or termination of a lease relieve the lessee of the obligation to pay advance rental if advance rental became due prior to the date the request for surrender was received by the superintendent or area director;

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

(h) Upon expiration or surrender of a solid mineral lease the lessee shall deliver the leased premises in a condition conforming to the approved reclamation plan. Unless otherwise provided in the lease, the machinery necessary to operate the mine is the property of the lessee. However, the machinery may not be removed from the leased premises without the written permission of the Secretary.

§ 211.52 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment, thereof shall be accompanied by a filing fee of $75.00 at the time of filing.

§ 211.53 Assignments, overriding royalties, and operating agreements.

(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease. If consent is not required, then the Secretary shall notify the Indian mineral owner of the proposed assignment. To obtain the approval of the Secretary the assignee must be qualified to hold the lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions of the lease.

(b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary.

(c) Assignments of leases, and stipulations modifying the provisions of

existing leases, which stipulations are also subject to the approval of the Secretary, shall be filed with the superintendent within five (5) working days after the date of execution. Upon execution of satisfactory bonds by the assignee the Secretary may permit the release of any bonds executed by the assignor. Upon execution of satisfactory bonds the assignee accepts all the assignor's responsibilities and prior obligations and liabilities of the assignor (including but not limited to any underpaid royalties and rentals) under the lease.

(d) Agreements creating overriding royalties or payments out of production shall not be considered as interests in the leases as such provision is used in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in such agreements shall be construed as modifying any of the obligations of the lessee, including, but not limited to, obligations imposed by requirements of the MMS for reporting, accounting, and auditing; obligations for diligent development and operation, protection against drainage and mining in trespass, compliance with oil and gas, geothermal, and mining regulations (25 CFR part 216; 43 CFR parts 3160, 3260, 3480, and 3590; and those applicable rules found in 30 CFR chapter II, subchapters A and C) and the requirements for Secretarial approval before abandonment of any oil and gas or geothermal well or mining operation. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered as justification for the approval of abandonment of any oil and gas or geothermal well or mining operation. Nothing in this paragraph revokes the requirement for approval of assignments and other instruments which is required in this section, but any overriding royalties or payments out of production created by the provisions of such assignments or instruments shall be subject to the condition stated in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent unless incorporated in assignments or instruments required to be filed pursuant to this section.

§ 211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

(a) If the Secretary determines that a permittee or lessee has failed to comply with the terms of the permit or lease; the regulations in this part; or other applicable laws or regulations; the Secretary may:

(1) Serve a notice of noncompliance specifying in what respect the permittee or lessee has failed to comply with the requirements referenced in this paragraph, and specifying what actions, if any, must be taken to correct the noncompliance; or

(2) Serve a notice of proposed cancellation of the lease or permit. The notice of proposed cancellation shall set forth the reasons why lease or permit cancellation is proposed and shall specify what actions, if any, must be taken to avoid cancellation.

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

(d) The lessee or permittee shall have thirty (30) days (or such longer time as specified in the notice) from the date that the notice is served to respond, in writing, to the official or the Bureau of Indian Affairs office that issued the notice.

(e) If a permittee or lessee fails to take any action that is 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 permittee's or lessee's actions, then the Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(f) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying the permittee's or lessee's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation of operations. If the permittee or lessee fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (h), the Secretary may issue an order of lease or permit cancellation.

(g) Cancellation of a lease or permit shall not relieve the lessee or permittee of any continuing obligations under the lease or permit.

(h) Orders of cessation or of lease or permit cancellation issued pursuant to this section may be appealed under 25 CFR part 2.

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

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

(k) The authorized officer, MMS official, and the superintendent and/or area director should consult with one another before taking any enforcement actions.

§ 211.55 Penalties.

(a) In addition to or in lieu of cancellation under § 211.54, violations of the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary, or, in the case of solid minerals the authorized officer, may subject a lessee or permittee 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 lessee or permittee either personally or by certified mail to the lessee or permittee at the lessee's or permittee's last known address. The date of service by certified mail shall be deemed to be the date when 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 lessee or permittee of the lessee's or permittee's right to either request a hearing within thirty (30) days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the superintendent and/or area director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the lessee or permittee 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 prescribed 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 lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor 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 in full of penalties more than ten (10) days after a final decision imposing a penalty shall subject the lessee or permittee 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 lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under § 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 for violations of applicable regulations pursuant to 43 CFR part 3160, and 43 CFR Groups 3400 and 3500, 30 CFR part 750, or 30 CFR chapter II, subchapters A and C;

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

(3) Authorizing the imposition of a penalty for violations of lease or permit terms for which the authorized officer, director's representative or MMS official, have either statutory or regulatory authority to assess a penalty.

§ 211.56 Geological and geophysical permits.

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

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

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

(c) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information after six (6) years, with the consent of the Indian mineral owner.

§ 211.57 Forms.

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

§ 211.58 Appeals.

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

PART 212—LEASING OF ALLOTTED LANDS FOR MINERAL DEVELOPMENT

Subpart A—General

Sec.

Subpart B—How to Acquire Leases

Subpart C—Rents, Royalties, Cancellations, and Appeals

Authority: Act of March 3, 1909, (35 Stat. 783; 25 U.S.C. 396 (as amended)): Act of May 11, 1938, (Sec. 2, 52 Stat. 347; 25 U.S.C. 396 b-g: Act of August 1, 1956, (70 Stat. 774)); and 25 U.S.C. 2 and 9.

Subpart A—General

§ 212.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of individual Indian oil and gas, geothermal and solid mineral resources. These regulations are applicable to lands or interests in lands the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after

the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

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

(d) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 212.4, 212.5, and 212.6 of this part are supplemental to these regulations, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

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

§ 212.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 212.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

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

Area director means the Bureau of Indian Affairs official in charge of an area office.

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.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

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

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

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

Geothermal resources means:

(1) All products of geothermal processes, 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 an administrative action affecting the interests of an Indian mineral owner. In considering whether it is ''in the best interest of the Indian mineral owner'' to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

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

Indian mineral owner means any individual Indian or Alaska Native who owns mineral interests in oil and gas, geothermal, or solid mineral resources, title to which is held in trust by the United States, or is subject to the restriction against alienation imposed by the United States.

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

Lease means any contract, approved by the Secretary of the Interior under the Act of March 3, 1909 (35 Stat. 783)(25 U.S.C. 396), as amended, and the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorize exploration for, extraction of, or removal of any minerals.

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

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil, 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 Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

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

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

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per

year of common varieties of minerals from Indian lands.

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

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

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

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

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180— Onshore Oil and Gas Unit Agreements: Unproven Area, 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, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. Those regulations, apply to leases or permits issued under this part.

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

The OSM 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 coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases issued under this part.

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

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 212.7 Environmental studies.

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

§ 212.8 Government employees cannot acquire leases.

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

Subpart B—How to Acquire Leases

§ 212.20 Leasing procedures.

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

(b) Indian mineral owners may request the Secretary to prepare, advertise and negotiate mineral leases on their behalf. Leases for minerals shall be advertised for bids as prescribed in this section unless one or more of the Indian mineral owners of a tract sought for lease request the Secretary to negotiate for a lease on their behalf without advertising. Unless the Secretary decides that negotiation of a mineral lease is in the best interests of the Indian mineral owners, he shall use the following procedure for leasing:

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

(2) The advertisement shall offer the tracts to a responsible bidder offering the highest bonus. The Secretary shall establish the rental and royalty rates which shall be stated in the advertisement and will not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required. The requirements under § 212.21 are applicable to the acceptance of a lease bid.

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

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

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

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

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained. The requirements under § 212.21 are applicable to the approval of a mineral lease.

§ 212.21 Execution of leases.

(a) The Secretary shall not execute a mineral lease on behalf of an Indian mineral owner, except when such owner is deceased and the heirs to or devisee of the estate have not been determined, or if determined, some or all of them cannot be located. Leases involving such interests may be executed by the Secretary, provided that the mineral interest shall have been

offered for sale under the provisions of section 212.20(b) (1) through (6).

(b) The Secretary may execute leases on behalf of minors and persons who are incompetent by reason of mental incapacity; *Provided,* that there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

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

§ 212.22 Leases for subsurface storage of oil or gas.

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

§ 212.23 Corporate qualifications and requests for information.

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

§ 212.24 Bonds.

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

§ 212.25 Acreage limitation.

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

§ 212.26 [Reserved]

§ 212.27 Duration of leases.

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

§ 212.28 Unitization and communitization agreements, and well spacing.

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

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

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

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

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

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

§ 212.29 [Reserved]

§ 212.30 Removal of restrictions.

(a) Notwithstanding the provisions of any mineral lease to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the lease. Thereafter, all payments required to be made under the lease shall be made directly to the owner(s).

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

§§ 212.31, 212.32 [Reserved]

§ 212.33 Terms applying after relinquishment.

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

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

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

(2) If, at the time supervision is relinquished by the Secretary, the lessee has made all payments then due and has fully performed all obligations on the lessee's part to be performed up to the time of such relinquishment, the bond given to secure the performance of the lease, on file in the appropriate agency or area office, shall be of no further force or effect.

(3) Should relinquishment affect only part of the lease, then the lessee may continue to conduct operations on the land covered by the lease as an entirety; *Provided,* that the lessee shall pay, in the manner prescribed by the lease and regulations for the benefit of lessor, the same proportion of all rentals and royalties due under the provisions of this part as the acreage retained under the supervision of the Secretary bears to the entire acreage of the lessee, and shall pay the remainder of the rentals and royalties directly to the remaining lessors or successors in title or said trustee as the case may be, as provided in paragraph (a) (1) of this section.

(b) *Division of fee.* If, after the execution of the lease and after the

Secretary relinquishes supervision thereof, the fee of the leased land is divided into separate parcels held by different owners, or if the rental or royalty interest is divided in ownership, the obligations of the lessee shall not be modified in any manner except as specifically provided by the provisions of the lease. Notwithstanding such separate ownership, the lessee may continue to conduct operations on said premises as an entirety. Each separate owner shall receive such proportion of all rental and royalties accruing after the vesting of its title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental or royalty interest as the case may be. If at any time after departmental supervision of the lease is relinquished, in whole or in part, to rentals and royalties, whether said parties are so entitled by virtue of undivided interest or by virtue of ownership of separate parcels of the land covered, the lessee may elect to withhold the payment of further rentals or royalties (except as the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their said respective successors in title.

§ 212.34 Individual tribal assignments excluded.

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

Subpart C—Rents, Royalties, Cancellations, and Appeals

§ 212.40 Manner of payments.

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

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

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of $2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16–⅔ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

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

The provisions of § 211.42 of this subchapter are applicable to leases under this part.

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

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

§ 212.44 Suspension of operations.

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

§ 212.45 [Reserved]

§ 212.46 Inspection of premises, books, and accounts.

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

§ 212.47 Diligence, drainage and prevention of waste.

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

§ 212.48 Permission to start operations.

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

§ 212.49 Restrictions on operations.

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

§ 212.50 [Reserved]

§ 212.51 Surrender of leases.

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

§ 212.52 Fees.

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

§ 212.53 Assignments, overriding royalties, and operating agreements.

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

§ 212.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

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

§ 212.55 Penalties.

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

§ 212.56 Geological and geophysical permits.

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

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

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

(3) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may, in the discretion of the Secretary, release such information after six (6) years.

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

(1) The minerals are owned by more than one person, and the owners of a

majority of the interest therein consent to the permit;

(2) The whereabouts of one or more owners of the minerals or an interest therein is unknown, and all the remaining owners of the interests consent to the permit;

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

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

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

§ 212.57 Forms.

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

§ 212.58 Appeals.

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

Dated: June 13, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16036 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–02–P

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

25 CFR Part 700

Protection of Archaeological Resources

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Interim final rule with comment period.

SUMMARY: This rule establishes procedures for implementing provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470–aa–11) for the lands which are administered by the O.N.H.I.R. and have been acquired pursuant to Public Law 96–305 (25 U.S.C. 640–d(h). The rule is necessary and its intended effect is to allow the Federal Land Manager to protect archaeological resources on lands being developed for resettlement purposes.

DATES: This rule is effective August 7, 1996.

Comments must be received on or before August 7, 1996.

ADDRESSES: Comments may be mailed to the Executive Director, Office of Navajo and Hopi Indian Relocation, P.O. Box KK, Flagstaff, Arizona 86002.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation, at 520–779–8953.

SUPPLEMENTARY INFORMATION: Pub. L. 96–305 (25 U.S.C. 640d–11) provided for the acquisition of land for the use of Navajo families required to relocate under the terms of Pub. L. 93–531. Approximately 365,000 acres of land in Arizona have been acquired, taken into trust, and made part of the Navajo Reservation. Approximately 35,000 acres of land in the State of New Mexico will be acquired, taken into trust and made a part of the Navajo Reservation. These lands are referred to as the New Lands. Pursuant to Pub. L. 96–305, as amended, by Pub. L. 100–666, the Office of Navajo and Hopi Indian Relocation (O.N.H.I.R.) has complete administrative authority over these New Lands until the relocation program is completed as determined by the President.

The 1986 Interior Appropriations Bill (Pub. L. 99–190) provided construction funds to the Bureau of Indian Affairs for the purpose of building replacement homes on the New Lands. A number of relocations were completed at the New Lands under the authority of the Bureau of Indian Affairs. In 1988, Congress enacted Pub. L. 100–666, which transferred to the O.N.H.I.R. on January 31, 1989, all powers and duties of the Bureau of Indian Affairs derived from Pub. L. 99–190, that related to the relocation of members of the Navajo Tribe and also transferred all funds appropriated for such activities relating to such relocation. Before the passage of Pub. L. 100–666, the O.N.H.I.R. and the Bureau of Indian Affairs had worked together planning and developing the New Lands for resettlement purposes and relied upon the Bureau of Indian Affairs, to issue Archaeological Resources Protection Act (16 U.S.C. 470aa–11) permits on the New Lands. After the passage of Pub. L. 100–666, and the transfer of all powers and duties of the Bureau of Indian Affairs to the O.N.H.I.R., questions arose regarding which governmental agency was the Federal Land Manager and has the authority to issue A.R.P.A. permits on the New Lands. It was determined that the O.N.H.I.R. is the Federal Land Manager on the New Lands and that the Bureau of Indian Affairs, Navajo Area Office, did not have administrative jurisdiction or surface management responsibilities on the New Lands located in Arizona. Thus the O.N.H.I.R. has the appropriate authority to issue A.R.P.A. permits. These regulations are being published pursuant to that authority to allow the Federal Land Manager to protect archaeological resources on the New Lands by issuing permits for authorized excavation and/or removal of archaeological resources, by imposing civil penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources, by providing for the preservation of archaeological resource collections and data and by ensuring confidentiality of information about archaeological resources when disclosure would threaten the resources. These regulations will apply to all New Lands in the states or Arizona and New Mexico acquired for relocation purposes.

These regulations are being published as an Interim Final Rule because of the time frame involved in the movement of eligible individuals to the New Lands. Because the O.N.H.I.R. has been requested by Congress in the 1995 Department of Interior and Related Agencies Appropriations Act (Pub. L. 103–332) to present a plan for the phase out of the relocation program, and transfer of its functions before the year 2000, there is considerable urgency to complete the development of the New Lands. In order to complete such development the O.N.H.I.R. must publish these regulations. It is, therefore, necessary for these regulations to become effective immediately so that development can go on uninterrupted.

The principal author of this final rulemaking is Paul Tessler, Legal counsel, Office of Navajo and Hopi Indian Relocation.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interest, Freedom of information, Grant program—Indians, Indian claims, Privacy, Real property acquisition, Relocation Assistance and New Lands Administration.

PART 700—[AMENDED]

Accordingly, the Office is amending 25 CFR Part 700, by adding Subpart R, as follows:

1. The authority citation for Part 700 continues to read as follows: