Operating Under New Laws Pertaining to Mineral Development on Indian Lands

B. Reid Haltom

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OPERATING UNDER NEW LAWS PERTAINING
TO MINERAL DEVELOPMENT ON INDIAN LANDS

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Nordhaus, Haltom, Taylor & Taradash
Albuquerque, New Mexico

PUBLIC LANDS MINERAL LEASING:
ISSUES AND DIRECTIONS

A short course sponsored by the
Natural Resources Law Center
University of Colorado School of Law
June 10-11, 1985


1. History and Purpose.

The Solicitor of the Department of the Interior determined that the Secretary could not waive advertising and competitive bidding requirements of the 1938 Leasing Act, except if all bids were rejected after advertising. The Act was adopted to permit tribes to negotiate joint venture and other types of development contracts. The Act pertains to oil, gas, uranium, coal, geothermal or other energy or non-energy mineral resources.


a. The Act authorizes tribes, subject to the approval of the Secretary and subject to limitation in tribal constitutions and charters, to enter into negotiated joint ventures, operating, production sharing, service, managerial, lease or other agreements, for the exploration for the extraction, processing and other development of oil, gas and other minerals.

b. An individual Indian can include his restricted interest (allotment or trust patent) in a tribal minerals agreement, subject to concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

c. The Act requires the Secretary to make a determination that the agreement is in the best interest of the tribe (or individual Indians participating), considering:
1. Potential economic return to the tribe.
2. Potential environmental, social and cultural effects on the tribe.
3. Provision for resolving disputes.
   d. The Secretary was required to review existing non-lease agreements and approve or disapprove them. This has been accomplished.

B. REGULATIONS. The Secretary was mandated by the Act to publish regulations within 180 days. Final regulations were not published as of April 30, 1985. The operating regulations of BLM and some reporting regulations of MMS have been published to implement FOGRMA. (see Part II. B.) On July 12, 1983, proposed regulations were published as 25 C.F.R., Part 225 for oil and gas mineral contracts, removing 25 C.F.R., Part 212, and as revisions to 25 C.F.R., Part 211 for contracts for prospecting and mining on Indian lands (except oil and gas) (see Attachment 2).

C. SPECIAL PROCEDURES.
1. Billings Area Office. (see Attachment 3)

D. APPROVAL PROCESS (see Attachment 4). Frankly, no one is certain of the approval process, and it may differ from one BIA area office to another.

E. SUGGESTED PROCEDURE.
1. Proposal Stage.
   a. An oil and gas development company should submit a written proposal to the chairman, president or governor of the tribe. A tribe should insist on a written proposal specifying the major points and identifying the proposed acreage.
b. The tribe and company should insure that the acreage is not currently under lease. Obtain a title status report from BIA.

c. The proposal should be screened for compliance with any tribal procedures and legal requirements. This is best done by a special tribal minerals committee, the oil and gas administration or a minerals consultant with the advice of legal counsel. In fact, most tribes rely most heavily on their legal counsel.

2. Negotiation Stage.

a. Private discussion between the developer and a negotiating team appointed by the tribal council (the BIA should be included) should produce a tentative set of terms and conditions that can be set forth in a letter of intent or agreement of principles to be approved by the tribal council subject to BIA approval and preparation of a satisfactory formal agreement.

b. The parties are cautioned to ascertain any position on or requirements of the BIA such as, Environmental Compliance (EA or EIS), economic analysis (at least as good as a lease), title opinion; and those of the MMS and BLM.

c. The tribe should check out the company, its finances and reputation before approving the letter of intent by council resolution.

3. Approval Stage.

a. The final agreement should be approved in accordance with tribal law (ordinance, constitution or traditional procedure).
b. The agreement will be submitted to the BIA for approval.

c. The parties must closely monitor progress of the agreement through the BIA at each stage and encourage BIA action.

4. Typical Provisions. The Act requires a procedure for resolution of Disputes. We recommend considering the items listed in Attachment 5.

I. Current Issues Involving Indian Mineral Development.

A. ACQUISITION.


2. Negotiated Leases. Once all bids have been rejected, the tribe or BIA, on behalf of individuals, can negotiate any oil and gas lease. Leases can also be negotiated with tribes under the IMDA and allottees may be included if a tribe is involved. Leases for other minerals have always been available by private negotiations.

3. Joint Ventures. Joint Ventures follow the procedure outlined in Part L

B. ACCOUNTING.

1. FOGRMA. The Federal Oil and Gas Royalty Management Act was passed in 1982; P.L. 97-451, (see Attachment 6). This Act created the MMS to which the USGS functions were assigned. Final rules implementing the MMS portion of the Act were published September 21, 1984, as changes to 30 C.F.R., Parts 210, 212, 217, 218, 219, 228, 229, 241 and 243. (Attachment 7)
a. AFS. The Auditing and Financial System is the first phase which has been implemented but is not fully operational. El Paso Natural Gas Company is not converted.

b. PAAS. The Production Accounting and Auditing System is to be the second phase which will use reported production information to assure the validity of AFS processed royalty payments.

c. BRASS. The Bonus and Rental Accounting Support System is a third phase system to process and distribute bonus and rental collections. Nonetheless, MMS has directed that rental payments for in-kind leases and non-producing leases be sent directly to the tribes.

d. RCD. Although there are other divisions at MMS, the Royalty Compliance Division is responsible for audits of federal and Indian lease accounts and coordination of joint audit agreements. Only the Navajo Tribe and the Jicarilla Apache Tribe have joint audit agreements.

2. Problems.

a. Late royalty payments, especially to allottees, failure to coordinate system with BIA distribution system.

b. Poorly designed system, incorrect payments, lack of accountability.

c. Refusal to account for joint ventures, in-kind arrangements on tribal production.

d. No exception processing.

e. Inadequate reports to State and Indian tribes.

f. Allowance of adjustments without supporting data.
3. Litigation and Investigation.
   a. Shii Shi Keyah Association v. Hodel, No. CIV-84-1622 M, USDC (D. NM)
   b. Kauley v. United States, No. CIV-84-3306 T, USDC (WD Okla.)
   c. Royalty Accounting Cases.
      JAT v. Supron, et al., 728 F.2d 1555 (10th Circuit 1984); En Banc Reargument concluded; also Jicarilla Apache Tribe v. Conoco, No. CV-76-430 C, USDC (D. NM)
      Blackfeet v. Montana Power Co., CIV-83-219 GF, USDC (D. NM)
      O'Neal, Association of Wind River Allotees, et al v. Amoco C-83-0432, USDC (D. Wyo.)
      Shoshone and Arapahoe v. Conoco
   e. House Commerce Committee Hearings held April 8, 1984, in Oklahoma.

C. COMPLIANCE.

1. FOGRMA. Transferred functions from USGS to BLM. Final rules implementing the BLM portion of the Act were published September 21, 1984 as 43 C.F.R., Part 3160. (Attachment 8)

2. Problems:
   a. Lack of personnel.
   b. Failure to implement PAAS.
   c. No on-site production verification.
   d. The BLM Penalty Regulations have been suspended.
3. Tribal efforts.
   a. Tribes are beginning to work with BLM and BIA to allow for enforcement officers, trained and certified by the BLM.
   c. Environmental Protection Ordinance - Jicarilla Apache Tribe.

4. Tax Problems -
   Ken McKee v. Navajo
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ATTACHMENT 1.

PUBLIC LAW 97-382—DEC. 22, 1982

INDIAN MINERAL DEVELOPMENT
ACT OF 1982
Public Law 97-382  
97th Congress  

An Act  

To permit Indian tribes to enter into certain agreements for the disposition of tribal mineral resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Indian Mineral Development Act of 1982”.

Sec. 2. For the purposes of this Act, the term—

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

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

(3) “Secretary” means the Secretary of the Interior.

Sec. 3. (a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a “Minerals Agreement”) providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources (hereinafter referred to as “mineral resources”) in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

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

Sec. 4. (a) The Secretary shall approve or disapprove any Minerals Agreement submitted to him for approval within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28, United States Code.

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

(c) Not later than thirty days prior to formal approval or disapproval of any Minerals Agreement, the Secretary shall provide written findings forming the basis of his intent to approve or disapprove such agreement to the affected Indian tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Minerals Agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe.

(d) The authority to disapprove agreements under this section may only be delegated to the Assistant Secretary of the Interior for Indian Affairs. The decision of the Secretary or, where authority is delegated, of the Assistant Secretary of the Interior for Indian Affairs, to disapprove a Minerals Agreement shall be deemed a final agency action. The district courts of the United States shall have jurisdiction to review the Secretary's disapproval action and shall determine the matter de novo. The burden is on the Secretary to sustain his action.

(e) Where the Secretary has approved a Minerals Agreement in compliance with the provisions of this Act and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such agreement: Provided, That the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement: Provided further, That nothing in this Act shall absolve the United States from any responsibility to Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreement between the United States and any Indian tribe.

Ssc. 5. (a) The Secretary shall review, within ninety days of enactment of this Act, any existing Minerals Agreement, which does not purport to be a lease, entered into by any Indian tribe and approved by the Secretary after January 1, 1975, but prior to enactment of this Act, to determine if such agreement complies with the purposes of this Act. Such review shall be limited to the terms of the agreement and shall not address questions of the parties' compliance therewith. The Secretary shall notify the affected tribe and other parties to the agreement of any modifications necessary to bring an agreement into compliance with the purposes of this Act. The tribe and other parties to such agreement shall within ninety days after notice make such modifications. If such modifications are not made within ninety days, the provisions of this Act may not be used as a defense in any proceeding challenging the validity of the agreement.

(b) The review required by subsection (a) of this section may be performed prior to the promulgation of regulations required under section 8 of this Act and shall not be considered a Federal action
within the meaning of that term in section 102(2)(C) of the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(C)).

Sec. 6. Nothing in this Act shall affect, nor shall any Minerals Agreement approved pursuant to this Act be subject to or limited by, the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a et seq.), as amended, or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe.

Sec. 7. In carrying out the obligations of the United States, the Secretary shall ensure that upon the request of an Indian tribe or individual Indian and to the extent of his available advice, assistance, and information during the negotiation of a Minerals Agreement. The Secretary may fulfill this responsibility either directly through the use of Federal officials and resources or indirectly by providing financial assistance to the Indian tribe or individual Indian to secure independent assistance.

Sec. 8. Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this Act. The Secretary shall, to the extent practicable, consult with national and regional Indian organizations and tribes with expertise in mineral development both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations. Where there is pending before the Secretary for his approval a Minerals Agreement of the type authorized by section 3 of this Act which was submitted prior to the enactment of this Act, the Secretary shall evaluate and approve or disapprove such agreement based upon section 4 of this Act, but shall not withhold or delay such approval or disapproval on the grounds that the rules and regulations implementing this Act have not been promulgated.

Sec. 9. Nothing in this Act shall impair any right of an Indian tribe organized under section 16 or 17 of the Act of June 18, 1934 (48 Stat. 987), as amended, to develop their mineral resources as may be provided in any constitution or charter adopted by such tribe pursuant to that Act.

Approved December 22, 1982.

LEGISLATIVE HISTORY—S. 1894:

HOUSE REPORT: No. 97-746 (Comm. on Interior and Insular Affairs).
SENATE REPORT: No. 97-472 (Comm. on Indian Affairs).
June 30, considered and passed Senate.
Aug. 17, considered and passed House, amended.
Dec. 8, Senate concurred in House amendment with an amendment.
Dec 10, House concurred in Senate amendments.
Tuesday
July 12, 1983

Part III

Department of the Interior

Bureau of Indian Affairs

Mining Regulations; Proposed Rule
DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Mining Regulations

June 15, 1983.

AGENCY: Bureau of Indian Affairs. Interior.

ACTION: Proposed rule.

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

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

ADDRESSES: Comments should be submitted to Program Officer, Division of Energy and Mineral Resources, Bureau of Indian Affairs, 730 Simms Street, Room 238, Golden, Colorado 80401. Comments pertaining to the rule's information collection should be addressed to: Office of Information and Regulatory Affairs Office of Management and Budget, Attention: Desk Officer for Interior, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David Baldwin, (303) 244-6981, or Tommy Riggs, (202) 343-3722.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8. The authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8. The proposed rules would replace all existing rules governing the disposition of minerals and oil and gas currently found in 25 CFR Parts 211—Leasing of tribal lands for mining (formerly Part 171, redesignated March 30, 1982) and Part 212—Leasing of allotted lands for mining (formerly Part 172). The proposed rules would not affect leasing and mining oil and gas development governed by Parts 213, 214, 215 and 216 (formerly Parts 174, 175, 176, and 177, respectively). Interested parties should be aware that any agreements involving surface mining operations must require that the operator meet the requirements of Subpart A of Part 216. Surface Exploration, Mining and Reclamation of this title.

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

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

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

Information Collection Requirements

The information collection requirements contained in §§ 211.5(d), 211.21(c)(5), and (c)(8), 211.22(e), 211.36(a), 211.39(b) and (c), 211.42, 211.43, 211.44(a) and 211.44(b) in Part 211 and similar information requirements in §§ 225.3(d), 225.31(c)(3) and (c)(5), 225.32(d), 225.34, 225.43(a), and (a)(4), 225.46(c) and (d), 225.47(b) and (c), 225.49(b), 225.52, 225.54(b), and 225.55(a) of Part 225 will be submitted to the Office of Management and Budget as
required by 44 U.S.C. 3501 et seq. The
collection of this information will not be
required until it has been approved by
the Office of Management and Budget.
Comments on this rule's information
collection should be submitted to the
Office of Management and Budget's
Interior Desk Officer. See address
section.

E.O. 12291, Federal Regulation

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

1. An annual effect on the economy
of $100 million or more;

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

3. Significant adverse effects on
competitive, employment, investment,
productivity, innovation, or on the
ability of the United States based
to compete with foreign-
periods.

Regulatory Flexibility Act.

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

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

List of Subjects

25 CFR Part 211
Indians—lands. Mineral resources.
Mines, Exploration.

25 CFR Part 212
Indians—lands. Mineral resources.
Mines, Oil and gas exploration.

25 CFR Part 225
Indians—lands. Oil and gas
exploration.

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

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

PART 211. General

§211.1 Purpose and scope.

The regulations in this part govern
contracts for prospecting and mining of
Indian-owned minerals, other than oil
and gas and geothermal. Subpart A—
Mines, Exploration. Subpart B—
Mining Leases. Subpart C—
General contains miscellaneous
provisions which apply to the issuance
of contracts for prospecting and mining
under both Subparts A and B. These
regulations are intended to ensure that
Indian owners desiring to have their
minerals (except oil and gas) developed
receive, at least, fair market value for
the disposition of their mineral
resources; to ensure that any adverse
environmental and cultural impact
resulting from such development is
minimized, and to permit Indian mineral
owners to enter into contracts which
allow them more responsibility in
overseeing and greater flexibility in
disposing of their mineral resources.

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

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

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

Subpart A—Minerals Agreements

§211.3 Definitions.

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

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

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

Subpart B—Mining Leases

§211.10 Scope.

Subpart C—General

§211.20 Scope.

Subpart D—Approval of agreements.

Subpart E—Procedures for awarding
leases.

Subpart F—Duration of leases.

Subpart G—Removal of restrictions.

Subpart H—Environmental assessments.

Subpart I—Authority and responsibility of
the Authority and responsibility of the
Minerals Management Service (MMS).

Subpart J—Approval of amendments to
contracts.

Subpart K—Removal of restrictions.

Subpart L—Geological and geophysical permits.

Subpart M—Economic assessments.

Subpart N—Environmental assessments.

Subpart O—Persons signing in a representative
capacity.

Subpart P—Bonds.

Subpart Q—Manner of payments.

Subpart R—Recordkeeping.

Subpart S—Mining contracts—leased lands.

Subpart T—Assignments—leasing rights.

Subpart U—Enforcement of orders.

Subpart V—Legal review.

Subpart W—Penalties.

Subpart X—Appeals.

Subpart Y—Fees.

Authority: Sec. 4, Act of May 11, 1938 (52
1909, as amended (35 Stat. 783, 25 U.S.C. 396);
Act of August 9, 1955, as amended (69
Stat. 659, 25 U.S.C. 415); Act of July 8, 1940 (54
Stat. 434, 25 U.S.C. 613); Act of March 3,
1909, as amended (35 Stat. 783, 25 U.S.C. 396);
Act of March 3, 1909, or other agreement, or
amendment, supplement, or other
modification of such agreement,
providing for the exploration for, or
extraction, processing, or other
development of minerals, or providing
for the sale or disposition of the
products or products of such mineral
resources.

§211.10 Scope.

(a) The regulations in this part govern
contracts for prospecting and mining of
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and gas and geothermal. Subpart A—
Mines, Exploration. Subpart B—
Mining Leases. Subpart C—
General contains miscellaneous
provisions which apply to the issuance
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allow them more responsibility in
overseeing and greater flexibility in
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(b) The regulations in this part do not
cover leasing and mining governed by
the regulations in 25 CFR Parts 213, 214,
215, and 226.

(c) No regulations which become
effective after the approval of any
contract shall operate to affect the term
of the contract, the rate of royalty,
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parties to the contract.

(d) Whenever the masculine gender is
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Subpart A—Minerals Agreements

§211.3 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart B—Mining Leases

§211.20 Scope.

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

§ 211.21 Procedures for awarding leases. 

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

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

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

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and notice of such advertisement shall be published at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the contract bid by or on behalf of the Indian mineral owner is required. The complete text of the advertisement must be published in at least one local newspaper and such notice must include in addition to the aforementioned terms, a description of the specific tracts to be offered.

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

(4) If no bid is received which meets the criteria of paragraph (a) of this section, or if the successful bidder fails to complete the lease, or if the Indian mineral owner refuses to accept the highest bid, the Secretary may readvertise the lease, or if deemed advisable, and in accordance with paragraph (b) of this section, he may attempt to award a lease by private negotiations, provided that he shall not award a lease by private negotiations without the written concurrence of the mineral owner unless he is exercising his authority under subsection (c) of this section.

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

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

§ 211.22 Duration of leases.

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

(b) When a mining lease specifies a term of years and "as long thereafter as minerals are produced in paying quantities", or similar phrase, the term "paying quantities" shall mean: That quantity of recovered minerals which produces during the fiscal year of the lease a profit to the operator over and above the total cost of Extraction (exclusive of exploration), processing (including beneficiation), and handling to the point of sales; all rents and royalties paid under the lease, all salaries and employee expenses directly related to such extraction, processing, and handling; all taxes incident thereto except tribal severance taxes; and business licenses, repairs of equipment, and transportation.

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

(d) Express written approval by the Secretary with the consent of the Indian mineral owner, for the suspension of mining operations for more than 60 days may be granted upon negotiation of a minimum rent, not to be credited against future production royalties, which shall
be paid in lieu of a production royalty, and in addition to any other rents under the lease.

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

Subpart C—General
§ 211.30 Scope.
This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this Part.

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

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

§ 211.33 Definitions.
As used in this part:
(a) "Secretary" means the Secretary of the Interior or his authorized representative.
(b) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs.
(c) "Superintendent" means the Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a minerals agreement under this part.
(d) "Bureau" means the Bureau of Indian Affairs.
(e) "Indian mineral owner" means:
(1) any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;
(2) any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.
(f) "Minerals" includes both metallic and nonmetallic minerals, except oil and gas, and includes but is not limited to, geothermal, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.
(g) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals; However, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is mining only if the sale and removal of such mineral exceeds 5,000 cubic yards.
(h) "Authorized Officer" means any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.
(i) "Minerals Management Service (MMS) Official" means any person authorized by law or by lawful delegation of authority in the Minerals Management Service to perform the duties described.
(j) "Oil" means any non-gaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.
(k) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.
(l) "Operator" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with, an Indian mineral owner with respect to, or has entered into a minerals agreement to mine for Indian-owned minerals.
(m) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with, an Indian mineral owner with respect to, or has entered into a mineral contract to prospect or explore for Indian-owned minerals.
(n) "Contract" means any lease or minerals agreement.

§ 211.34 Approval of amendments to contracts.
(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this Part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if he determines that the contract, as modified, meets the criteria for approval set forth in § 211.6 or § 211.21.
(b) An amendment to or modifications of a contract for the prospecting or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 211.6 or § 211.21 of this Part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 211.37 of this Part, and an environmental and cultural assessment pursuant to § 211.39 of this part.
(c) The exercise of options to lease for the mining of Indian-owned minerals— which options were not exercised prior to the effective date of these regulations, shall be approved by the Secretary pursuant to § 211.21 of this Part if the lease meets the conditions of that section.

§ 211.35 Removal of restrictions.
(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the Indian mineral owner(s).
(b) In the event restrictions are removed from a part of the land—
included in any contract to which this part applies, the entire contract shall continue subject to the supervision of the Secretary until such time as the holder of the contract and the unrestricted minerals owner shall furnish to him satisfactory evidence that adequate arrangements have been made to account for the mineral resources upon the restricted land separately from that upon the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the Secretary. The contract, the regulations of this part, and all other applicable laws and regulations.

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

§ 211.36 Geological and geophysical permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 211.37 Environmental assessments.

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

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

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

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

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

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

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

(b) [Reserved].

§ 211.38 Environmental assessments.

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

(3) Such other information as the Secretary may require in the exercise of his trust responsibility to the Indian mineral owner.

(c) The Secretary may, either before or after the approval of a permit, mineral agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part other applicable laws and regulations and his trust responsibility to the Indian mineral owner. Failure to furnish the requested information will be deemed sufficient cause for disapproval or cancellation of the instrument, whichever is appropriate.

§211.40 Bonds.

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

(b) A Corporation proposing to acquire an interest in a permit or a mineral agreement, assignment, or bond, shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 600. If the secretary shall, prior to approval of a contract, perform surveys of the cultural resources so as to evaluate and make a determination of the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470 et seq., or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation.

§211.42 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations done under a contract, including information on the type, grade, or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All records maintained under paragraph (a) of this section, all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination and reproduction by the Secretary, the Authorized Officer, and tribal mineral owners, upon request, accompanied by written assurances that such records will be held in confidence, until all obligations under the contract have been fulfilled. Such records shall at all times be available for purposes of audit upon the request of the Secretary. When an independent audit is requested by the Secretary, he may require that the cost thereof be borne by the operator.

(3) Such other information as the Secretary may require in the exercise of his trust responsibility to the Indian mineral owner.

(c) The Secretary may, either before or after the approval of a permit, mineral agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part other applicable laws and regulations and his trust responsibility to the Indian mineral owner. Failure to furnish the requested information will be deemed sufficient cause for disapproval or cancellation of the instrument, whichever is appropriate.

§211.43 Mining contracts—Inherited lands.

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

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

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

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

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

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

(3) The operator is required to submit, and obtain the approval of the Secretary, a plan describing how the operator will account to the non-consenting mineral interest owners for.
all income attributable to their undivided interest. [4] Non-consenting mineral owners receive certified written notice that the Bureau proposes to approve a contract affecting their undivided interest without their consent within 10 days from receipt of the notice. [c] The Secretary shall provide all non-consenting mineral owners with certified written notice that he has approved the contract affecting their undivided interest without their consent.

§ 211.44 Assignments; overriding royalties.

(a) No assignment or sublease of any interest in a contract entered into pursuant to this part shall be effective without the approval of the Indian mineral owner and the Secretary pursuant to and subject to the criteria of § 211.6 of this part. Approval shall not relieve the assignor of his obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner, releases the assignor of his obligations under the contract, or the Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such an agreement shall not be construed as modifying any of the obligations of the prospector or operator under his contract and the regulations in this part and Part 216 of this title, including the requirement of Secretarial approval prior to abandonment.

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

§ 211.45 Enforcement of orders.

(a) If the Secretary determines that a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, his orders or the orders of the Authorized Officer, and which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits being mined, or other valuable mineral deposits or other resources, the Secretary shall order the immediate cessation of such activities, without prior notice of noncompliance. Such an order may be appealed as provided in Part 2 of this title. Compliance with such an order shall not be suspended by reason of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian mineral owner or upon submission of a bond deemed adequate by the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

(b) Nothing in this section is intended to supersede the independent authority of the Authorized Officer under 30 CFR Part 3000. However, the Authorized Officer and the Secretary shall consult with one another, when feasible, before taking any enforcement actions.

[e] No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the mineral agreement or otherwise available at law.

§ 211.46 Legal review.

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

§ 211.47 Penalties.

Violation of any of the terms or conditions of any mineral agreement or of the regulations under this part shall subject the permittee or operator to a fine of not more than $1,000 per day for each day of such violation or noncompliance with the orders of either the Secretary or the Authorized Officer. Provided, that prior to the determination that a fine will be imposed as provided for in this section, the permittee or operator shall receive a 30 day notice with respect to the terms of the contract or of the regulations violated and, if he so requests, may receive a hearing before the Secretary. Payment of penalties more than 10 days after notice of final decision is given shall be subject to late charges at the rate of not less than 1 1/2 percent per month for each month or fraction thereof until paid. All penalties charged pursuant to this section shall be deposited with the Indian owners.

§ 211.48 Appeals.

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

(b) Cessation orders issued pursuant to § 225.44 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian oil and gas owner or upon submission of a bond deemed adequate by both the Indian oil and gas owner and the Secretary to indemnify the Indian oil and gas owner from any resulting loss or damage.

Proposed Rules
PART 212—LEASING OF ALLOTTED LANDS FOR MINING [REMOVED]

PART 225—OIL AND GAS MINERAL CONTRACTS

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\[\text{§ 225.21 Definitions.}\]

\[\text{As used in this Subpart:}\]

\[\text{(a)}\] "Mineral’s agreement" means any joint venture, operating, production sharing, service, managerial, lease, contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas, or providing for the sale or disposition of production or product of oil and gas.

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

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

\[\text{§ 225.22 Authority to contract.}\]

\[\text{(a)}\] Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement, amendment, supplement or other modification of such agreement for the exploration for, or extraction, processing, or other development of oil and gas, or for the sale of or disposition of products of such oil and gas.

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

\[\text{§ 225.23 Negotiation procedures.}\]

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

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

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

(c) In order to avoid delays in obtaining approval of a proposed agreement the tribe should confer with the Secretary prior to formally executing the agreement and seek his advice as to whether the agreement appears to meet the requirements of §225.24 or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

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

§225.24 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved as follows: (1) One hundred eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C)) or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. Provided that the Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effect of the Implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C)).

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

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

1. The minerals agreement provides a fair and reasonable remuneration, to the Indian mineral owner;
2. The minerals agreement does not have a potential environmental impact on the Indian lands and community affected sufficient to outweigh its benefits to the Indian mineral owner;
3. The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

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

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

1. Not less than that received by non-Indian mineral owners in comparable contemporary contractual arrangements for the development of similar oil and gas resources;
2. Not less than that received by the Federal Government in comparable contractual arrangements for the development of similar oil and gas resources, and
3. Not less than the minimum rental and royalty payments which would be applicable to similar oil and gas resources were they Federally-owned.

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

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

Subpart B—Oil and Gas Leases.

§225.30 Scope.

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

§225.31 Procedures for awarding leases.

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

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

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

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition.

(2) The advertisement shall specify any terms requested by the Indian oil and gas owner and, where sufficient information exists, and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any/all bids, and that acceptance of the lease by or on behalf of the Indian oil and gas owner is required. The complete text of the advertisement must be published in at least one local newspaper, and such notice must include, in addition to the aforementioned terms, the description of specific tracts to be offered.

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

(4) If no bid is received which meets the criteria of paragraph (a) of this section or if the successful bidder fails to complete the lease, or if the Indian oil and gas owner refuses to accept the highest bid, the Secretary may readvertise the lease, or if deemed advisable, and in accordance with paragraph (b) of this section, he may attempt to award a lease by private negotiations, provided that he shall not award a lease by private negotiations without the written concurrence of the oil and gas owner unless he is exercising his authority under § 225.46 of this part.

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

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

§ 225.32 Duration of leases.

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

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

(c) In order to continue production in paying quantities beyond the primary term of a lease, the operator must not suspend oil and gas operations at any time for a period of 30 days or more without the prior express written approval of the Secretary unless production is impossible as a result of an act of God or some other cause clearly beyond the operator's control.

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

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

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

(a) An oil or gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.
(b) If the royalty on production paid during any year aggregates less than $2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16 2/3 percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the Authorized Officer. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, gas, shall, if requested by the lessee, be furnished by the lessee to the Indian mineral owner. Such gas furnished shall be received by the Indian mineral owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee and the Indian mineral owner. Such gas shall pay a price therefore equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian mineral owner shall equal the highest price that could be obtained from another gas purchase, less royalty. In addition to the above payments, the Indian mineral owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian mineral owner. The acquisition and use of any such gas purchased by the Indian mineral owner shall be at the Indian mineral owner's sole risk at all times. Provided, that this requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that waste would not result. Gas furnished to the Indian mineral owner under this section may be terminated only with the approval of the Superintendent.

§ 225.34 Contracts for subsurface storage of oil and gas.

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian mineral owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such storage fee or rental, or in lieu thereof, for a royalty or percentage payment other than that prescribed if the oil and gas is produced in conjunction with oil or gas not previously produced.

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

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Authorized Officer and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project.

Subpart C—General

§ 225.40 Scope.

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

§ 225.41 Authority and responsibility of Authorized Officer.

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

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

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

§ 225.43 Definitions.

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

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

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

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

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

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

(g) "Indian mineral owner" means:

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

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

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

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

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

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

§ 225.44 Approval of amendments to contracts.

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

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

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

§ 225.45 Geological and geophysical permits.

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

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

2. The permit will not grant the operator any option or preference rights to a lessee or other development contract or authorize the production or removal of oil and gas.

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

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

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

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

§ 225.46 Removal of restrictions.

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

(b) In the event restrictions are removed from a part of the land included in any contracted to which this part applies, the entire contract shall continue subject to the supervision of the Secretary until such time as the permit has expired, or as otherwise provided for in the permit.

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

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

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

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

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

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

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

(f) For the purposes of these regulations a "geological and geophysical permit" means a written authorization from the Indian mineral owner to conduct on-site surveys to locate oil and gas deposits on the lands included in the permit by mechanical, electronic, or other means.
holder of the contract and the
unrestricted oil and gas owner shall
furnish to him satisfactory evidence that
adequate arrangements have been made
to account for the oil and gas upon the
restricted land separately from that
upon the unrestricted. Thereafter, the
unrestricted portion shall be relieved
from supervision of the Secretary, and
the restricted portion shall continue
subject to such supervision as is
provided by the Secretary, contract, the
regulations of this part, and all other
applicable laws and regulations.

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

§ 225.47 Oil and gas contracts of
undivided inherited lands.

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

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

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

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

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

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

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

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

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

§ 225.48 Persons signing in a
representative capacity.

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

(b) A corporation proposing to acquire
an interest in a permit or a contract
real property interest in Indian-owned
oil and gas shall file with the instrument
a statement showing:

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

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

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

(c) If the heirs include a life tenant,
the Secretary may, either before
or after the approval of a permit,
mineral contract, assignment, or bond,
call for any additional information
necessary to carry out the regulations in
this part, other applicable laws and
regulations, and his trust responsibilities
to the Indian oil and gas owner. Failure
to furnish the requested information will
be deemed sufficient cause for
disapproval or cancellation of the
instrument, whichever is appropriate.

225.49 Economic assessments.

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

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

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

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

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

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

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

(b) [Reserved].

225.50 Environmental assessments.

(a) An environmental assessment
shall be prepared in accordance with
regulations promulgated by the Council
of Environmental Quality, 40 CFR 1508.9,
and the Environmental Quality
Handbook. 30 BLM Supplement 1.

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

(b) In order to make a determination
of the effect of the contract on
prehistoric, historic, architectural,
archeological, cultural, and scientific
resources, in compliance with the
National Historic Preservation Act, 16
U.S.C. 470 et seq., Executive Order 11593
(May 1971), and regulations promulgated
thereunder. 36 CFR Parts 60-63, ad 60,63,
§ 225.51 Bonds.
(a) The Secretary may require a geological or geophysical permittee to furnish a surety bond in such amount as he deems appropriate.
(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Authorized Officer and the Secretary, but in no event less than $10,000.
(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file on bond for $50,000 for all oil and gas contracts in any one state, or such lesser jurisdiction, as determined by the Secretary, including contacts on that part of an Indian reservation extending into states contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.
(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, an operator or permittee may file with the Secretary a bond in the sum of $150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.
(e) Bonds shall be by corporate surety bonds.
(f) The right is specifically reserved to the Secretary to increase or decrease the amount of bonds in his discretion.
(g) In lieu of a bond required by this section, an irrevocable bank letter of credit may be submitted for the same amount as a bond.

§ 225.52 Manner of Payments.
Unless otherwise provided in an approved contract all payments shall be paid to the Secretary or such other party as he may designate and shall be made at such time as provided in the advertisement, permit, or minerals agreement.

§ 225.53 Assignments and overriding royalties.
(a) Assignments. Mineral contracts or any interest therein, may be assigned or transferred only with the approval of the Secretary. Assignments may also be made only with the approval of the Indian mineral owner if such approval is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof. An operator must assign either his entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area. Provided, that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons such assignment shall be subject to both the consent of the Secretary and the Indian oil and gas owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all parties.
(b) Overriding royalty. Agreements creating overriding royalties or payments out of production shall not be considered as an assignment. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of the operator with the Indian oil and gas owner under his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production need not be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section. An agreement creating overriding royalties or payments out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Secretary.

§ 225.54 Restrictions on operations; workover and shut-In applications.
(a) The Secretary may impose such restrictions as in his judgment are necessary for the protection of Indian-owned natural resources.
(b) The Secretary may, upon application of the lessee and under such terms and conditions as he may prescribe and after obtaining the consent of any Indian mineral owner, affected if such consent is required in the contract, authorize suspension of operating and production requirements whenever it is considered that marketing facilities are inadequate or economic conditions unsatisfactory or transportation facilities unavailable. Such suspensions shall not exceed beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 (52 Stat. 1247; 25 U.S.C. 398a-g) or leases on allotted lands approved pursuant to the Act of March 3, 1933, as amended (35 Stat. 783, 25 U.S.C. 398). Applications by operators for relief from operating and producing requirements shall be filed in triplicate with the Authorized Officer and a copy thereof filed with the Secretary. Complete information must be furnished showing the necessity for such relief. Suspension of operations and production shall not relieve the operator from the obligations of continued payment of annual rental or minimum royalty. The operator shall pay as shut-In royalty an additional $2.50 per acre in advance for each annual period of suspension. Provided that if the period of suspension is less than 12 months, the rate will be prorated. Said shut-In royalty shall not be recoverable out of royalties or otherwise from subsequent production.
(c) The Secretary may, after obtaining the consent of any Indian mineral owner affected, and under such terms and conditions as he may prescribe, authorize suspension of operating and producing requirements both in the primary and extended lease terms, whenever it is determined that reworking or drilling operations are in the best interest of the Indian mineral owner, provided, that such reworking or drilling operations are commenced within 60 days and thereafter conducted with reasonable diligence during the period of nonproduction. Any suspension under this paragraph shall
§ 225.55 Unitization, communication and well-spacing agreements.

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

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

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

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

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

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

§ 225.56 Inspection of premises; books and accounts.

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

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

§ 225.57 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a prospect or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the contract, the requirements of an approved exploration or mining plan, his orders or the orders of the Authorized Officer and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospect or operator by delivery in person or by certified mail to him at his last known address. Copies of said notice shall be sent to all interested parties. Failure of the prospect or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary, or to initiate an appeal pursuant to Part 2 of this title shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for his recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the operator has violated and, if he so requests, may receive a hearing at which he, the Indian oil and gas owner as set forth in the minerals agreement or otherwise available at law.

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

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

§ 225.58 Penalties.

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

§ 225.59 Appeals.

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

(b) Cessation orders issued pursuant to Section 225.56 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian oil and gas owner or upon submission of a bond deemed adequate by both the Indian oil and gas owner and the Secretary to indemnify the Indian oil and gas owner from any resulting loss or damage.

§ 225.60 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof shall be accompanied by a filing fee of not less than $25.

§ 225.61 Legal review.

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

Kenneth Smith, Assistant Secretary—Indian Affairs.
DATE: APR 29 1983

REPLY TO: Real Property Management, Division of Trust
ATTN OF: Procedures to be implemented regarding Negotiated Agreements promulgated under P.L. 97-382 "Indian Minerals Development Act of 1982"
SUBJECT: All Superintendents, Billings Area

TO: Area Director, Billings Area

From: Area Director, Billings Area

Attached for your information is a copy of the Billings Area Office procedure and policy for handling the subject agreements.

Please provide this information to the appropriate Tribal governing body.

[Signature]
Area Director
Requirements of the BIA in regards to the provisions of P.L. 97-382, "Indian Mineral Development Act of 1982"

The governing body of an Indian Tribe, after it has reached a negotiated agreement with industry, will submit written notice to the Agency Superintendent requesting approval action on said proposed agreement. The BIA will then take action on the agreement in accordance with the below listed steps.

1. A joint review of the agreement will be performed by Agency and Area staff. An economic evaluation will be a part of the review process.

2. A legal review of the provisions of the proposal will be conducted by the Solicitors office. The BAO will coordinate this legal review.

3. If the terms and provisions of the agreement are found to be acceptable, an environmental assessment will be initiated and completed on the identified acreage. The environmental assessment will be performed by the respective company (industry) under the supervision of the Agency Superintendent, who will then submit the assessment to the appropriate Agency/Area staff for review.

4. The Superintendent shall then submit his complete findings (environmental assessment, review of the agreement, economic evaluation and Solicitors opinion) to the Area Director with his recommendation as to whether the agreement should be approved or disapproved.

5. The Agency Superintendent, shall also submit the results of the review to the tribe. The tribe and the company will be required to make any appropriate changes if the terms or provisions are in conflict with the condition's of P.L. 97-382. A 30 day waiting period is required before final approval by the Area Director. The thirty (30) day waiting period begins on the date in which official notice to approve or disapprove is given to the tribe.

6. The disapproval of any minerals agreement under the new law can be given only by the Assistant Secretary.
Public Law 97-382 "Indian Mineral Development Act"

Total of 6 months from date of issuance to Area Office or 60 days after EA/EIS
ATTACHMENT 5

OIL AND GAS EXPLORATION

JOINT VENTURE AGREEMENT

I PRELIMINARY MATTERS

II TEST WELLS

III DEVELOPMENTAL WELLS

IV INTERESTS EARNED BY DRILLING

V EMPLOYMENT OF MEMBERS OF THE TRIBE

VI TERMINATION OF INTEREST

VII RESOLUTION OF DISPUTES - ARBITRATION

VIII CONFIDENTIALITY OF INFORMATION

IX LICENSES AND PERMITS

X LIENS

XI APPLICABLE LAW

XII FEDERAL PROVISIONS

XIII RELATIONSHIP TO THIRD PARTY AGREEMENTS

XIV SEVERABILITY

XV EFFECTIVE DATE
EXHIBIT "A"
AGREEMENT OF OPERATIONS
(Modified A.A.P.L. Form 610-1982)

EXHIBIT "B"
IDENTIFICATION OF SUBJECT LANDS

EXHIBIT "C"
ACCOUNTING PROCEDURE

EXHIBIT "D"
EDUCATION AND TRAINING PROGRAM

EXHIBIT "E"
INSURANCE
PUBLIC LAW 97-451 [H.R. 5121]; January 12, 1983

FEDERAL OIL AND GAS ROYALTY MANAGEMENT
ACT OF 1982

For Legislative History of Act, see p. 4268

An Act to ensure that all oil and gas originated on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the “Federal Oil and Gas Royalty Management Act of 1982”.

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

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Sec. 102. Duties of lessees, operators, and motor vehicle transporters.
Sec. 103. Required recordkeeping.
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Sec. 105. Explanation of payments.
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TITLE II—STATES AND INDIAN TRIBES

Sec. 201. Application of title.
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Sec. 307. Statute of limitations.
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Sec. 309. Severability.

TITLE IV—REINSTATEMENT OF LEASES AND CONVERSION OF UNPATENTED OIL PLACER CLAIMS

FINDINGS AND PURPOSES

Sec. 2. (a) Congress finds that—

(1) the Secretary of the Interior should enforce effectively and uniformly existing regulations under the mineral leasing laws providing for the inspection of production activities on lease sites on Federal and Indian lands;

(2) the system of accounting with respect to royalties and other payments due and owing on oil and gas produced from such lease sites is archaic and inadequate;

(3) it is essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments and to provide for routine inspection of activities related to the production of oil and gas on such lease sites; and

(4) the Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas.

(b) It is the purpose of this Act—

(1) to clarify, reaffirm, expand, and define the responsibilities and obligations of lessees, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf;

(2) to clarify, reaffirm, expand and define the authorities and responsibilities of the Secretary of the Interior to implement and maintain a royalty management system for oil and gas leases on Federal lands, Indian lands, and the Outer Continental Shelf;

(3) to require the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United States and Indian lessors and those inuring to the benefit of States;

(4) to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources; and

(5) to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system.

DEFINITIONS

Sec. 3. For the purposes of this Act, the term—

(1) “Federal land” means all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate;

(2) “Indian allottee” means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation;

(3) “Indian lands” means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or an Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539);

(4) “Indian tribe” means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indian
ans, including the Metlakatla Indian Community of Annette Island Reserve, for which any land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation;

(5) "lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas;

(6) "lease site" means any lands or submerged lands, including the surface of a severed mineral estate, on which exploration for, or extraction or removal of, oil or gas is authorized pursuant to a lease;

(7) "lessee" means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease;

(8) "mineral leasing law" means any Federal law administered by the Secretary authorizing the disposition under lease of oil or gas;

(9) "oil or gas" means any oil or gas originating from, or allocated to, the Outer Continental Shelf, Federal, or Indian lands;

(10) "Outer Continental Shelf" has the same meaning as provided in the Outer Continental Shelf Lands Act (Public Law 95-372);

(11) "operator" means any person, including a lessee, who has control of, or who manages operations on, an oil and gas lease site on Federal or Indian lands or on the Outer Continental Shelf;

(12) "person" means any individual, firm, corporation, association, partnership, consortium, or joint venture;

(13) "production" means those activities which take place for the removal of oil or gas, including such removal, field operations, transfer of oil or gas off the lease site, operation monitoring, maintenance, and workover drilling;

(14) "royalty" means any payment based on the value or volume of production which is due to the United States or an Indian tribe or an Indian allottee on production of oil or gas from the Outer Continental Shelf, Federal, or Indian lands, or any minimum royalty owed to the United States or an Indian tribe or an Indian allottee under any provision of a lease;

(15) "Secretary" means the Secretary of the Interior or his designee; and

(16) "State" means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

DUTIES OF THE SECRETARY

Sec. 101. (a) The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other pay-

Comprehensive accounting and auditing 30 USC 1711.
ment owed, and to collect and account for such amounts in a timely manner.

(b) The Secretary shall—

(1) establish procedures to ensure that authorized and properly identified representatives of the Secretary will inspect at least once annually each lease site producing or expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations; and

(2) establish and maintain adequate programs providing for the training of all such authorized representatives in methods and techniques of inspection and accounting that will be used in the implementation of this Act.

(c)(1) The Secretary shall audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted. The Secretary shall conduct audits and reconciliations of lease accounts in conformity with the business practices and record-keeping systems which were required of the lessee by the Secretary for the period covered by the audit. The Secretary shall give priority to auditing those lease accounts identified by a State or Indian tribe as having significant potential for underpayment. The Secretary may also audit accounts and records of selected lessees and operators.

(2) The Secretary may enter into contracts or other appropriate arrangements with independent certified public accountants to undertake audits of accounts and records of any lessee or operator relating to the lease of oil or gas. Selection of such independent certified public accountants shall be by competitive bidding in accordance with the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), except that the Secretary may not enter into a contract or other arrangement with any independent certified public accountant to audit any lessee or operator where such lessee or operator is a primary audit client of such certified public accountant.

(3) All books, accounts, financial records, reports, files, and other papers of the Secretary, or used by the Secretary, which are reasonably necessary to facilitate the audits required under this section shall be made available to any person or governmental entity conducting audits under this Act.

**DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS**

**Sec. 102. (a) A lessee—**

(1) who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary; and

(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws.

(b) An operator shall—

(1) develop and comply with a site security plan designed to protect the oil or gas produced or stored on an onshore lease site from theft, which plan shall conform with such minimum stand-
ards as the Secretary may prescribe by rule, taking into account the variety of circumstances at lease sites;

(2) develop and comply with such minimum site security measures as the Secretary deems appropriate to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft; and

(3) not later than the 5th business day after any well begins production anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off of production for more than 90 days, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

(c)(1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry, on his person, in his vehicle, or in his immediate control, documentation showing, at a minimum, the amount, origin, and intended first destination of the oil.

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, on Federal or Indian lands shall maintain documentation showing, at a minimum, amount, origin, and intended first destination of such oil or gas.

REQUIRED RECORDKEEPING

SEC. 103. (a) A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this Act through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this Act or determining compliance with rules or orders under this Act. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this Act, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.

(b) Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained 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. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

PROMPT DISBURSEMENT OF ROYALTIES

SEC. 104. (a) Section 35 of the Mineral Lands Leasing Act of 1920 (approved February 25, 1920; 41 Stat. 437; 30 U.S.C. 191) is amended by deleting “as soon as practicable after March 31 and September 30 of each year” and by adding at the end thereof “Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for
any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.”.

(b) Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received.

(c) The provisions of this section shall apply with respect to payments received by the Secretary after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

EXPLANATION OF PAYMENTS

Sec. 105. (a) When any payment (including amounts due from receipt of any royalty, bonus, interest charge, fine, or rental) is made by the United States to a State with respect to any oil or gas lease on Federal lands or is deposited in the appropriate Indian account on behalf of an Indian tribe or Indian allottee with respect to any oil and gas lease on Indian lands, there shall be provided, together with such payment, a description of the type of payment being made, the period covered by such payment, the source of such payment, production amounts, the royalty rate, unit value and such other information as may be agreed upon by the Secretary and the recipient State, Indian tribe, or Indian allottee.

(b) This section shall take effect with respect to payments made after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

LIABILITIES AND BONDING

Sec. 106. A person (including any agent or employee of the United States and any independent contractor) authorized to collect, receive, account for, or otherwise handle any moneys payable to, or received by, the Department of the Interior which are derived from the sale, lease, or other disposal of any oil or gas shall be—

(1) liable to the United States for any losses caused by any intentional or reckless action or inaction of such individual with respect to such moneys; and

(2) in the case of an independent contractor, required as the Secretary deems necessary to maintain a bond commensurate with the amount of money for which such individual could be liable to the United States.

HEARINGS AND INVESTIGATIONS

Sec. 107. (a) In carrying out his duties under this Act the Secretary may conduct any investigation or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties under this Act.
In connection with any such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary—

(1) to require by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary;

(2) to administer oaths;

(3) to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;

(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) In case of refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

**INSPECTIONS**

SEC. 108. (a)(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the driver of such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

(b) Authorized and properly identified representatives of the Secretary may, without advance notice, enter upon, travel across and inspect lease sites on Federal or Indian lands and may obtain from the operator immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this Act. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.
(c) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

CIVIL PENALTIES

Sec. 109. (a) Any person who—
(1) after due notice of violation or after such violation has been reported under subparagraph (A), fails or refuses to comply with any requirements of this Act or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder; or
(2) fails to permit inspection authorized in section 108 or fails to notify the Secretary of any assignment under section 102(a)(2) shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. A penalty under this subsection may not be applied to any person who is otherwise liable for a violation of paragraph (1) if:
(A) the violation was discovered and reported to the Secretary or his authorized representative by the liable person and corrected within 20 days after such report or such longer time as the Secretary may agree to; or
(B) after the due notice of violation required in paragraph (1) has been given to such person by the Secretary or his authorized representative, such person has corrected the violation within 20 days of such notification or such longer time as the Secretary may agree to.

(b) If corrective action is not taken within 40 days or a longer period as the Secretary may agree to, after due notice or the report referred to in subsection (a)(1), such person shall be liable for a civil penalty of not more than $5,000 per violation for each day such violation continues, dating from the date of such notice or report.

(c) Any person who—
(1) knowingly or willfully fails to make any royalty payment by the date as specified by statute, regulation, order or terms of the lease;
(2) fails or refuses to permit lawful entry, inspection, or audit; or
(3) knowingly or willfully fails or refuses to comply with subsection 102(b)(3), shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(d) Any person who—
(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;
(2) knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any lease site without having valid legal authority to do so; or
(3) purchases, accepts, sells, transports, or conveys to another, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted, shall be liable for a penalty of up to $25,000 per violation for each day such violation continues.
(e) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing on the record.

(f) The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged.

(g) On a case-by-case basis the Secretary may compromise or reduce civil penalties under this section.

(h) Notice under this subsection (a) shall be by personal service by an authorized representative of the Secretary or by registered mail. Any person may, in the manner prescribed by the Secretary, designate a representative to receive any notice under this subsection.

(i) In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.

(j) Any person who has requested a hearing in accordance with subsection (e) within the time the Secretary has prescribed for such a hearing and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States district court for the judicial district in which the violation allegedly took place. Review by the district court shall be only on the administrative record and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary’s final order.

(k) If any person fails to pay an assessment of a civil penalty under this Act—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (j), or

(2) after a court in an action brought under subsection (j) has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period referred to in subsection (j). Judgment by the court shall include an order to pay.

(l) No person shall be liable for a civil penalty under subsection (a) or (b) for failure to pay any rental for any lease automatically terminated pursuant to section 31 of the Mineral Leasing Act of 1920.

CRIMINAL PENALTIES

Sec. 110. Any person who commits an act for which a civil penalty is provided in section 109(d) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

ROYALTY INTEREST, PENALTIES AND PAYMENTS

Sec. 111. (a) In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of the Internal Revenue Code of 1954. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

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(b) Any payment made by the Secretary to a State under section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191) and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(c) All interest charges collected under this Act or under other applicable laws because of nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee shall be deposited to the same account as the royalty with respect to which such interest is paid.

(d) Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under subsection 104(b) shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(e) Notwithstanding any other provision of law, no State will be assessed for any interest or penalties found to be due against the Secretary for failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulation of the Secretary of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Secretary in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to the date of the enactment of this Act except that if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State’s share of the overcharge.

(f) Interest shall be charged under this section only for the number of days a payment is late.

(g) The first sentence of section 35 of the Act of February 25, 1920 is amended by inserting “including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982” between “royalties” and “and”.

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

Sec. 112. (a) In addition to any other remedy under this Act or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States, which shall have jurisdiction over such actions—

(1) to restrain any violation of this Act; or

(2) to compel the taking of any action required by or under this Act or any mineral leasing law of the United States.

(b) A civil action described in subsection (a) may be brought only in the United States district court for the judicial district wherein the act, omission, or transaction constituting a violation under this Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

REWARDS

Sec. 113. Where amounts representing royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf are recovered pursu-
ant to any action taken by the Secretary under this Act as a result of information provided to the Secretary by any person, the Secretary is authorized to pay to such person an amount equal to not more than 10 percent of such recovered amounts. The preceding sentence shall not apply to information provided by an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under this Act, or any person acting pursuant to a contract authorized by this Act.

NONCOMPETITIVE OIL AND GAS LEASE ROYALTY RATES

SEC. 114. The Secretary is directed to conduct a thorough study of the effects of a change in the royalty rate under section 17(c) of the Mineral Leasing Act of 1920 on: (a) the exploration, development, or production of oil or gas; and (b) the overall revenues generated by such change. Such study shall be completed and submitted to Congress within six months after the date of enactment of this Act.

TITLE II—STATES AND INDIAN TRIBES

APPLICATION OF TITLE

SEC. 201. This title shall apply only with respect to oil and gas leases on Federal lands or Indian lands. Nothing in this title shall be construed to apply to any lease on the Outer Continental Shelf.

COOPERATIVE AGREEMENTS

SEC. 202. (a) The Secretary is authorized to enter into a cooperative agreement or agreements with any State or Indian tribe to share oil or gas royalty management information, to carry out inspection, auditing, investigation or enforcement (not including the collection of royalties, civil or criminal penalties or other payments) activities under this Act in cooperation with the Secretary, and to carry out any other activity described in section 108 of this Act. The Secretary shall not enter into any such cooperative agreement with a State with respect to any such activities on Indian lands, except with the permission of the Indian tribe involved.

(b) Except as provided in section 203, and pursuant to a cooperative agreement—

(1) each State shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Federal lands within the State; and

(2) each Indian tribe shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Indian lands under the jurisdiction of such tribe.

Information shall be made available under paragraphs (1) and (2) as soon as practicable after it comes into the possession of the Secretary. Effective October 1, 1983, such information shall be made available under paragraphs (1) and (2) not later than 30 days after such information comes into the possession of the Secretary.

(c) Any cooperative agreement entered into pursuant to this section shall be in accordance with the provisions of the Federal Grant and Cooperative Agreement Act of 1977, and shall contain such
Trade secrets and proprietary and confidential information, availability.

30 USC 1733.

Liability for wrongful disclosure.

30 USC 1734.

terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed upon activities.

INFORMATION

Sec. 203. (a) Trade secrets, proprietary and other confidential information shall be made available by the Secretary, pursuant to a cooperative agreement, to a State or Indian tribe upon request only if—

(1) such State or Indian tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an audit or investigation under this Act and who have a need to know;

(2) such State or tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an audit or investigation or to litigation under section 204; and

(4) in the case of an Indian tribe, such tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure by such tribe.

(b) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian tribe of any information provided to such individual, State, or Indian tribe pursuant to any cooperative agreement or a delegation, authorized by this Act.

(c) Whenever any individual, State, or Indian tribe has obtained possession of information pursuant to a cooperative agreement authorized by this section, or any individual or State has obtained possession of information pursuant to a delegation under section 205, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under this Act may be required to disclose such information under State law.

STATE SUITS UNDER FEDERAL LAW

Sec. 204. (a)(1) A State may commence a civil action under this section against any person to recover any royalty, interest, or civil penalty which the State believes is due, based upon credible evidence, with respect to any oil and gas lease on Federal lands located within the State.

(2)(A) No action may be commenced under paragraph (1) prior to 90 days after the State has given notice in writing to the Secretary of the payment required. Such 90-day limitation may be waived by the Secretary on a case-by-case basis.

(B) If, within the 90-day period specified in subparagraph (A), the Secretary issues a demand for the payment concerned, no action may be commenced under paragraph (1) with respect to such payment during a 45-day period after issuance of such demand. If,
during such 45-day period, the Secretary receives payment in full, no action may be commenced under paragraph (1).

(C) If the Secretary refers the case to the Attorney General of the United States within the 45-day period referred to in subparagraph (B) or within 10 business days after the expiration of such 45-day period, no action may be commenced under paragraph (1) if the Attorney General, within 45 days after the date of such referral, commences, and thereafter diligently prosecutes, a civil action in a court of the United States with respect to the payment concerned.

(3) The State shall notify the Secretary and the Attorney General of the United States of any suit filed by the State under this section.

(4) A court in issuing any final order in any action brought under paragraph (1) may award costs of litigation including reasonable attorney and expert witness fees, to any party in such action if the court determines such an award is appropriate.

(b) An action brought under subsection (a) of this section may be brought only in a United States district court for the judicial district in which the lease site or the leasing activity complained of is located. Such district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to require compliance or order payment in any such action.

(c)(1) Notwithstanding any other provision of law, any civil penalty recovered by a State under subsection (a) shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate.

(2) Any rent, royalty, or interest recovered by a State under subsection (a) shall be deposited in the Treasury of the United States in the same manner, and subject to the same requirements, as are applicable in the case of any rent, royalty, or interest collected by an officer or employee of the United States, except that such amounts shall be deposited in the Treasury not later than 10 days after receipt by the State.

DELEGATION TO STATES

Sec. 205. (a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to conduct inspections, audits, and investigations to any State with respect to all Federal lands or Indian lands within the State; except that the Secretary may not undertake such a delegation with respect to any Indian lands, except with the permission of the Indian tribe allottee involved.

(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section; and

(3) such delegation will not create an unreasonable burden on any lessee,

with respect to the Federal lands and Indian lands within the State.
Regulations. (c) The Secretary shall promulgate regulations which define those functions, if any, which must be carried out jointly in order to avoid duplication of effort, and any delegation to any State must be made in accordance with those requirements.

Standards. (d) The Secretary shall by rule promulgate standards and regulations, pertaining to the authorities and responsibilities under subsection (a), including standards and regulations pertaining to:

(1) audits performed;
(2) records and accounts to be maintained; and
(3) reporting procedures to be required by States under this section.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

Hearing. (e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation.

(f) The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year.

SHARED CIVIL PENALTIES

Sec. 206. An amount equal to 50 per centum of any civil penalty collected by the Federal Government under this Act resulting from activities conducted by a State or Indian tribe pursuant to a cooperative agreement under section 202 or a State under a delegation under section 205, shall be payable to such State or tribe. Such amount shall be deducted from any compensation due such State or Indian tribe under section 202 or such State under section 205.

TITLE III—GENERAL PROVISIONS

SECRETARIAL AUTHORITY

Sec. 301. (a) The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this Act. (b) Rules and regulations issued to implement this Act shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding section 553(a)(2) of that title. (c) In addition to entering into cooperative agreements or delegation of authority authorized under this Act, the Secretary may contract with such non-Federal Government inspectors, auditors, and other persons as he deems necessary to aid in carrying out his functions under this Act and its implementation. With respect to his auditing and enforcement functions under this Act, the Secretary shall coordinate such functions so as to avoid to the maximum extent practicable, subjecting lessees, operators, or other persons to audits or investigations of the same subject matter by more than one auditing or investigating entity at the same time.
REPORTS

Sec. 302. (a) The Secretary shall submit to the Congress an annual report on the implementation of this Act. The information to be included in the report and the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House of Representatives and on Energy and Natural Resources of the Senate. The Secretary shall also report on the progress of the Department in reconciling account balances.

(b) Commencing with fiscal year 1984, the Inspector General of the Department of the Interior shall conduct a biennial audit of the Federal royalty management system. The Inspector General shall submit the results of such audit to the Secretary and to the Congress.

STUDY OF OTHER MINERALS

Sec. 303. (a) The Secretary shall study the question of the adequacy of royalty management for coal, uranium and other energy and nonenergy minerals on Federal and Indian lands. The study shall include proposed legislation if the Secretary determines that such legislation is necessary to ensure prompt and proper collection of revenues owed to the United States, the States and Indian tribes or Indian allottees from the sale, lease or other disposal of such minerals.

(b) The study required by subsection (a) of this section shall be submitted to Congress not later than one year from the date of the enactment of this Act.

RELATION TO OTHER LAWS

Sec. 304. (a) The penalties and authorities provided in this Act are supplemental to, and not in derogation of, any penalties or authorities contained in any other provision of law.

(b) Nothing in this Act shall be construed to reduce the responsibilities of the Secretary to ensure prompt and proper collection of revenues from coal, uranium and other energy and nonenergy minerals on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities.

(c) Except as expressly provided in subsection 302(b), nothing in this Act shall be construed to enlarge, diminish, or otherwise affect the authority or responsibility of the Inspector General of the Department of the Interior or of the Comptroller General of the United States.

(d) No provision of this Act impairs or affects lands and interests in land entrusted to the Tennessee Valley Authority.

EFFECTIVE DATE

Sec. 305. The provisions of this Act shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act, except that in the case of a lease issued before such date, no
provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.

**FUNDING**

30 USC 1754. 

Sec. 306. Effective October 1, 1983, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary for the cooperative agreements, contracts, and delegations authorized by this Act: Provided, That nothing in this Act shall be construed to affect or impair any authority to enter into contracts or make payments under any other provision of law.

**STATUTE OF LIMITATIONS**

30 USC 1755. 

Sec. 307. Except in the case of fraud, any action to recover penalties under this Act shall be barred unless the action is commenced within 6 years after the date of the act or omission which is the basis for the action.

**EXPANDED ROYALTY OBLIGATIONS**

30 USC 1756. 

Sec. 308. Any lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this Act or any mineral leasing law.

**SEVERABILITY**

30 USC 1757. 

Sec. 309. If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

**TITLE IV—REINSTATEMENT OF LEASES AND CONVERSION OF UNPATENTED OIL PLACER CLAIMS**

**AMENDMENT OF MINERAL LANDS LEASING ACT OF 1920**

Sec. 401. Section 31 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) is amended by redesignating subsection (d) as subsection (j) and by inserting after subsection (c) the following new subsections:

"(d)(1) Where any oil and gas lease issued pursuant to section 17(b) or section 17(c) of this Act or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter..."
as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

(i) the lessee tendered rentals prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

(e) Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: Provided, however, That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future royalties at a rate of not less than 16% percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty

Ante, p. 2447.
determination for competitive leases issued pursuant to such section as determined by the Secretary: Provided, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

"(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement for future royalties at a rate not less than 16\% percent: Provided, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

"(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to re-instate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

"(d) Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 17(e) of this Act, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

"(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

"(A) with respect to any claim deemed conclusively abandoned on or before the date of enactment of the Federal Oil and Gas Royalty Management Act of 1982, on or before the one hundred and twentieth day after such date of enactment, or

"(B) with respect to any claim deemed conclusively abandoned after such date of enactment, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the deter-
mination of the abandonment of the oil placer mining claim;

"(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: Provided, however, That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

"(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

"(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12 1/2 percent; and

"(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

"(g)(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 17(b) or 17(c) of this Act.

"(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 17(c) of this Act.

"(h) The minimum royalty provisions of section 17(j) and the provisions of section 39 of this Act shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

"(i)(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

"(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judg-
ment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason."

Approved January 12, 1983.

LEGISLATIVE HISTORY—H.R. 5121 (S. 2305):
HOUSE REPORT No. 97-859 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 97-512 accompanying S. 2305 (Comm. on Energy and Natural Resources).
Sept. 29, considered and passed House.
Dec. 6, considered and passed Senate, amended, in lieu of H.R. 5121.
Dec. 13, House concurred in Senate amendments with an amendment.
Dec. 16, Senate concurred in House amendment with an amendment.
Dec. 18, House concurred in Senate amendment with an amendment.
Dec. 21, Senate disagreed to House amendment; House receded from its amendment and concurred in Senate amendment.
Jan. 12, Presidential statement.

96 STAT. 2466
Department of the Interior

Minerals Management Service

30 CFR Parts 210, 212, 217, 218, 219, 220, 229, 241, and 243

Implementation of the Federal Oil and Gas Royalty Management Act of 1982; Final Rule
DEPARTMENT OF THE INTERIOR
Minerals Management Service
30 CFR Parts 210, 212, 217, 218, 219, 228, 229, 241, and 243

Implementation of the Federal Oil and Gas Royalty Management Act of 1982

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule implements in part the Department of the Interior's authorities under the Federal Oil and Gas Royalty Management Act of 1982, which was enacted to ensure that all oil and gas produced on Federal and Indian lands is properly accounted for and that all revenues resulting from that production are collected and distributed properly. This rulemaking applies only to those sections of that Act that establish the duties and responsibilities of the Minerals Management Service Royalty Management Program.

EFFECTIVE DATE: October 22, 1984.

ADDRESS: Any inquiries should be sent to: Deputy Associate Director for Royalty Management Policy, Minerals Management Service (MS 690), 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FURTHER INFORMATION CONTACT: Orie L. Kelm (703) 860-7511, (FTS) 928-7511.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Robert E. Boldt, Associate Director for Royalty Management, MMS.

I. Background

In mid-1981, the Secretary of the Interior appointed the Commission on Fiscal Accountability of the Nation's Energy Resources (Commission) which produced a report in January 1982 making 60 specific recommendations for improvement of DOI's royalty management effort, including improved accounting, stricter penalty provisions for noncompliance, enhanced site security requirements on Federal and Indian leases, and new methods of seeking out and preventing potential oil theft. The Commission recommended in its final report that the Administration introduce legislation to implement those Commission recommendations which were not authorized by law and to update those statutory provisions which had become outdated over the years.

The Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97-451, 30 U.S.C. 1701 et seq., and subsequently referred to herein as "the Act") serves as the culmination of the efforts of the Department of the Interior to improve the processes by which it collects and accounts for bonuses, rents, and royalties on Federal and Indian oil and gas leases.

On September 20, 1983 (40 FR 42992), the MMS issued proposed regulations to implement its new authorities under the Act. Prior to publishing this proposed rule, the MMS held extensive informal meetings with producers, States, Indian tribes, and other affected groups to receive the maximum possible input on the form of the regulations. In response to the proposed rulemaking, the MMS received comments from 29 lessees and other interested persons. All of these comments were considered carefully in preparing these final regulations.

Included in this preamble is a discussion of the important comments on a section-by-section basis.

These rules are not the only rules to be issued under the Act. As the MMS gains experience with compliance problems under the new Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS), it intends to propose additional enforcement and penalty regulations. Other changes to the rules implemented today also may be necessary.

Moreover, the MMS is not the only part of DOI with responsibilities under the Act. The MMS regulations concern royalty on oil and gas production and the collection, accounting, and distribution of royalties and rental payments from Federal and Indian lands. Regulations dealing with other topics within the Act (e.g., lease management and site security) are issued by other offices of DOI. On September 16, 1983 (48 FR 41738), the Bureau of Land Management (BLM) issued proposed rules pertaining to its responsibilities under the Act. Final rules are being issued concurrently with these rules.

II. Summary of Rules Adopted

The following sections summarize the most significant provisions of the regulations being adopted today. Most of the rules being adopted are substantially the same as the proposed rules. Therefore, much of the discussion in the preamble to the proposed rules applies to the final rules. Where significant changes are being made to the final rules, they are discussed in this preamble.

Part 212. The provisions of Part 212, authorized by Section 103 of the Act, reaffirm required recordkeeping, including requirements for the submission of certain data to MMS.
These regulations also indicate, as provided in Section 206 of the Act, that 50 percent of any civil penalty collected by MMS under the activities authorized by Sections 202 and 225 of the Act will be shared with States or Indian tribes. However, the amount of that civil penalty will be deducted from the Federal share of any funding provided for in a cooperative agreement with a State of Indian tribe or a delegation of authority to a State.

These regulations also establish funding under the provisions of Sections 202 and 205 of the Act is subject to the availability of appropriations.

Part 222. This part, authorized by Section 206 of the Act, establishes regulations dealing with the delegation of certain authorities to the States to conduct investigations and audits with respect to all Federal lands within a State and to those Indian lands for which the State has received specific delegation of authority from the tribe or from individual Indian allottees.

These regulations establish requirements for factfinding and hearings on the part of the Department before a delegation is made to a particular State. These regulations specify that the term of delegation is for a period of 3 years with a possible extension for an additional 3 years on the mutual agreement of both parties. Requirements for recordkeeping and reporting from States involved in a delegation are also included as well as a provision for an annual audit of the State's activities carried out under the provisions of the delegation.

As required by the Act, allowable costs incurred by the State under the delegation of authority will be reimbursed 100 percent by the Federal Government.

Part 222 and 229. Section 203 of the Act authorizes regulations establishing the types of information which can be provided to States and Indian tribes under a cooperative arrangement dealing with the sharing of trade secrets and proprietary and confidential information.

Part 241. The regulations for Part 241, authorized by Section 109 of the Act, establish the process for the assessment and collection of civil penalties.

The primary intent of the penalty process is to elicit, to the greatest extent possible, voluntary compliance with MMS paying and reporting requirements as reflected by low error rates and timely paying and reporting.

Part 243. The purpose of this section is to provide and appeal mechanism for any MMS Royalty Management Program order or directive.

Sections of the Act for which regulations have not been formulated. There are a number of provisions of the Act for which specific regulations have not been formulated because the statutory language itself is self-explanatory or the language of the Act is advisory and does not require regulatory language to implement it. In other instances, the Department will reference an existing regulation as meeting the requirements of the Act.

Relationships to other statutes and regulations. Regulations are being issued by two separate bureaus of DOI; therefore, certain provisions of the Act will ultimately be implemented by regulations found in 43 CFR and 30 CFR Subchapter B (the offshore operating regulations) as well as in this Subchapter A of 30 CFR which, when fully completed, will provide a compendium of regulations relating to the royalty management process.

The subpart letter designations of the regulations indicate applicability to onshore or offshore matters, or both.

III. Comments Received on Proposed Rules—General

The proposed rulemaking published September 20, 1983, provided for a 30-day public comment period which ended October 20, 1983. All comments received during that time period are addressed in this section, and the text of these regulations has been changed to reflect comments as appropriate.

Two commentors felt that the 30-day comment period was too short. Since the MMS conducted extensive informal discussions with many interested parties prior to formulating the proposed rules, a longer formal public comment period was not considered necessary.

One commentator stated that the regulations should be prospective rather than retroactive.

The MMS agrees and the regulations are prospective with the exception of audits and certain appeals procedures. Audits, by their very nature, must involve looking back at historical records. See preamble § 243.2 for explanation of retroactive application to appeals.

One commentator objected to the burden that the rules will place on small nonoperating lessees and royalty payors, particularly the reporting and paying requirements.

Lessees and royalty payors may elect to have the operator or purchaser submit the required payments and reports to MMS. However, as required by the Act, those assuming paying and reporting obligations must comply with MMS reporting and paying requirements.
Further, the lessee will remain ultimately responsible for all payments and reports from the lease:

IV. Comments Received on Proposed Rules—Specific by Section

Port 210—Forms and Reports

Section 210.51 Payor information forms. Ten commentors found difficulty with the timing of reporting requirements (submission of Form MMS-4025). Most of these commentors noted that the requirement for submission within 30 days after issuance of a new lease or a change in the paying responsibilities of the lease conflicts with § 218.52 which requires notification within 60 days rather than 30 days. All commentors favored the longer 60-day period.

The MMS’s new computerized Auditing and Financial System (AFS) cannot properly track payment responsibilities without current and accurate Form MMS-4025 data. Consequently, the MMS must receive these forms within 30 days as required at § 210.51. The MMS understands that all the data required on Form MMS-4025 cannot always be provided within 30 days, especially in the case of newly issued leases. Nevertheless, the MMS will require the submittal of that form with the best data available at the time of submittal (at a minimum, MMS must be told who is to be the interim designated payor). An amended resubmittal should be made at a later date when lessee/payor responsibilities are changed. Section 218.52 has been revised from 60 days to 30 days to conform with § 210.51.

Section 210.52 Report of sales and royalty remittance. Four commentors suggested that changes be made to this section to permit early payments.

The MMS agrees and this has been done. One commentor suggested that the requirement for payment and reporting by the end of the second month be extended to the first business day of the following month, when the last day of the month falls on a weekend or holiday.

The MMS had to revise this section to eliminate the confusion that was associated with different time requirements for payment and payor information forms. The revised § 210.52 now requires payment by the end of the month following the production month. No extension to the succeeding month will be permitted.

One commentor recommended changing the section to restrict its applicability to rentals from MMS-managed leases and to exclude former BLM leases from Form MMS-2014 and electronic funds transfer requirements.

The MMS agrees in principle with the comment. In April 1984, MMS assumed responsibility for the collection of rentals on nonproducing onshore Federal leases. A new accounting system, the Bonus and Rental Accounting Support System (BRASS), was developed to account for all nonproducing leases. Eventually, most nonproducing leases on which rentals are being paid will be moved to the BRASS system, eliminating the need for the submission of the Form MMS-2014 for rentals from nonproducing leases. In the interim, those nonproducing leases maintained in the AFS will require the submission of Form MMS-2014. Electronic Funds Transfer (EFT) will not be required for the payment of rentals, except for first year rentals paid with the four-fifths portion of the offshore lease bonus bids.

One commentor stated that, contrary to this regulation, payments must continue to be made by the end of the first month following the production month due to the terms of existing leases.

The MMS has revised this part to require payment by the end of the first month following the production month. One commentor stated that Form MMS-2014 reporting requirements should be expanded to permit submission of the data via magnetic tape.

MMS agrees and the required wording change has been made.

Port 212—Records and Files Maintenance

Section 212.50 Required recordkeeping and reports. Three commentors addressed the 6-year requirement for recordkeeping. One favored it; a second objected to it as being too long; and the third suggested that MMS not have a policy to audit back more than 2 years since older records would be burdensome to retrieve.

The 6-year recordkeeping requirement is provided by Section 103(b) of the Act. A 2-year limitation is impractical and incompatible with statute of limitation requirements found in Federal and State law.

Section 212.51 Records and files maintenance. One commentor stated that NTL-1, 1A, and 5 and the Act as shown in paragraph (a) should not be referenced for recordkeeping requirements. Rather, the commentor states the recordkeeping requirements given at those locations should be fully spelled out in these regulations.

Subsequent changes to the Royalty Management regulations will incorporate the records and files maintenance requirements of existing orders and notices.

One commentor responded favorably to the provision in paragraph (b) that lessees and operators are only required to retain payment records for the period that the recordholders have paying or operating responsibility on the lease. A second objectied to this provision stating that lessees should always be responsible for complete recordkeeping for the full 6-year period and also that operators or other persons required to keep records generated during the time they had paying or operating experience be required to keep records for the full 6-year retention period.

Upon reexamination of the wording of paragraph (b), MMS has changed the text of the final regulation. All records pertaining to the lease must be retained for a period of 6 years even if paying or operating responsibilities have ceased. However, the lessee or operator remains responsible only for the records generated during its period of operating or paying responsibility. The text of the subsection has been revised accordingly. MMS has also changed paragraph (c) by adding the term “revenue payor” to make clear that any person or entity who makes mineral revenue payments to MMS, but has no other obligations under the lease, is covered by these regulations.

Three commentors stated that a reasonable period of time should be permitted for producing records since historical records are often stored offsite.

MMS agrees and the wording has been changed accordingly in paragraph (c) of § 212.51.

Port 217—Audits and Investigations

Section 217.50 Audits of records. Three commentors stated that words should be added to this section—indicating that no more than one auditing or investigating entity should be conducting an audit at the same time as required by Section 301 of the Act.

Section 301 of the Act “recommends” that care be taken to prevent multiple audits by different entities (MMS, States, OIG, etc.) from taking place concurrently. However, it does not prohibit such concurrent audits. In conformity with the Act, it is the policy of MMS to avoid concurrent or uncoordinated audits, if possible. MMS feels it is unnecessary to state this in the regulations.

One commentor suggested that MMS consider a policy of auditing lease
The MMS will make the audits as current as possible but the 6-year audit cycle is in keeping with standard industry and Government auditing practices.

One commentor suggested adding the words "during the time period set out in § 212.50." to the end of the paragraph to clarify that audits will not look back further than the recordkeeping requirements.

The MMS will not audit further back than records are required to be maintained unless the recordholder has been notified in writing of a continued shortfall of data from lessees/payors. This final regulation is in agreement with present practice of the MMS.

MMS agrees that normal practice does not require reaudits, but cannot state that there will never be reaudits.

One commentor stated that 180-days' notice of audit should be given along with information about what specific items will be audited.

A 6-month notice requirement of an impending audit is unreasonable. MMS will give reasonable time for furnishing records, depending on the circumstances of each audit.

Section 217.51 Lease account reconciliation. One commentor stated that the same time constraints should apply to MMS for lessee overpayments as apply to lessees for underpayments in regard to reconciliation of lease accounts.

MMS has a program for reconciling all lease accounts with open balances within a specified period of time. All overpayments, as well as underpayments, will be resolved as a result of that program.

See comments on § 218.54 for further discussion.

Part 218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

Section 218.50 Timing of payment. A total of 20 comments were received concerning this issue in paragraph (a).

Nineteen commentors supported the proposed change to 60 days in the payment cycle and suggested that the 60-day cycle be made applicable to all Federal and Indian oil and gas leases.

One commentor objected to the extension of time from 30 to 60 days for payments on leases.

The commentors in favor of the 60-day payment period would all benefit financially from such an extension. The Federal Government, States and Indian tribes would suffer a loss of substantial revenues. The Government's original proposal to extend the payment period was prompted by its desire to obtain more accurate reporting and payment data from lessee/payors. This was consistent with the recommendations of the Commission on Fiscal Accountability of the Nation's Energy Resources. However, because the huge loss of revenue to the Federal Government, States, and Indian tribes would be so significant as compared to an unknown higher degree of accounting accuracy, the MMS will not extend the payment due date as proposed. The MMS will rely on a system of assessments for incorrect or late reporting and paying. This final regulation is in agreement with present lease payment terms.

One commentor stated that § 218.50(b) was not clear as to whether separate royalty checks or EFT payments would be required for Indian allotted leases and for Indian tribal leases.

MMS has made the required clarifying change now found at § 218.51(f).

One commentor stated that the word "payment" should be inserted instead of "royalty" at subparagraph (b)(2) of § 218.50, because Indian tribes receive payments other than royalties.

MMS agrees and this has been done and moved to paragraph (f) of § 218.51.

One commentor questioned if the term "format" as used in this subparagraph (b)(3) refers to Form MMS-2014. The word "format" as used in this subparagraph (f)(2) does refer to Form MMS-2014.

Section 218.51 Method of payment. Three commentors requested a change in the text of paragraph [a]. Specifically, they asked that we delete the proposed language which was in parentheses: "(OCS bonuses . . . of the Part)" and replace it with a new § 218.51(c) referencing 30 CFR 218.155 (formerly 30 CFR 256.13) which would clarify that payments on nonproducing leases are not required to be made by EFT.

MMS has made a clarifying change. However, a new subsection (c) for this purpose was not deemed necessary.

Two commentors were confused about rental payments for onshore nonproducing leases. One contended that they are to be made to BLM (as required by lease terms) and the other was not sure whether they were to be made to BLM or to MMS and, if to MMS, to which MMS office.

Changes that have been made to the section should eliminate that confusion.

Beginning in April 1984, all rental payments on all nonproducing Federal leases, except first year rentals and bonuses for onshore leases and except for the six excepted land categories listed below, will be paid to MMS-RMAC at Lakewood, Colorado. The six excepted land categories are: Coos Bay—Wagon Road; Oregon and California Coastal Lands; Alaska National Petroleum Reserve; Taylor Grazing Act Districts; BLM National Grasslands; and South half of the Red River—Oklahoma Lands.

One commentor suggested that nonproducing lease rental payments be excluded from the EFT requirements.

This has been done. However, such payments can be made by EFT at the option of the payor, if approval is obtained prior to use of EFT from the MMS-RMAC in Lakewood, Colorado.

One commentor stated that there was confusion about the payment level for determining the $50,000 threshold for making payment by EFT. Another commentor objected to combining multiple lease payments to reach an aggregate amount.

Payment level is to be determined by payor number. Whenever the aggregate amount of royalties due on a given day for a single payor (any entity assigned a payor number by MMS) equals or exceeds $50,000, the payment must be made by EFT.

One commentor stated that the amount triggering the EFT payment requirement should be $100,000 not $50,000. Another commentor stated that all payors should be allowed to make payments by any payment method they choose providing the payment is timely and in the proper amount.

Neither of the above two comments are acceptable to MMS since the intent of requiring payment of amounts of $50,000 or more by EFT is to ensure the earliest availability of funds to the U.S. Treasury.

Two commentors recommended that the list of alternative methods for remittance of less than $50,000 in paragraph (b) include payment by means of EFT.

The MMS agrees and payment by EFT has been included as an alternative optional method for amounts under $50,000.

One commentor stated that paragraph (b) is unclear as to whether payments could include combined payments from more than one lease.

Payments could include combined payments from more than one lease. See paragraph (f)(2) of § 218.51 of the final rule.
Section 218.52 Designated payor. Five commentors noted that the proposed 60-day period for notifying MMS of paying responsibility or any change in paying responsibility conflicts with the 30 day reporting period at § 210.51.

This section has been amended to 30 days to conform to § 210.51 requirements. For an explanation of the 30-day requirement, see the discussion of comments on § 210.51 given above.

One commentor contended that in the case of joint lessees, no single lessee must be assigned as the "designated payor."

The MMS must have a "payor" or "payors" assigned for the proper operation of its new computerized accounting system.

Section 218.53 Division of interest. Eight commentors stated that MMS should change the provision that division of interest documents be submitted at the end of the second month following the "date of the contract" to the end of the second month following the "date of the first production or sale," since industry practice is not to prepare such documents until production is imminent, particularly in the case of gas.

Four commentors suggested that the time period be extended from 60 days (end of second month) to 120 days for submission of division of interest documents to allow time to resolve problems of title documentation. One commentor felt that the reference relating division orders to "contracts for sale of products" is misleading. "Contracts for sale of products," the commentor states, are not always identical to terms involving the lessee's interest in the lease. This commentor also felt that the submission of Form MMS-4225 under § 210.51 should provide sufficient information and make the submission of division of interest documents unnecessary.

Four commentors stated that all State laws do not require division of interest documents. In view of comments received on this issue, MMS will not include the specific requirements for submission of Division of Interest Documents in this rulemaking.

Section 218.54 Late payments and underpayments. One commentor suggested the regulations be modified to specify that late payments and underpayments be determined at the Accounting Identification Number (AID) level. MMS disagrees; late payments and underpayments are assessed at the AID, product code, and selling arrangement levels. If all lines on a Form MMS-2014 are paid late, then the late payment billing is rolled up to reflect that the entire Form MMS-2014 is late, rather than identifying every line as being late. In those instances where it is only certain lines on Form MMS-2014 are reported and paid late, the late payment billing identifies each late line.

Two commentors stated that the same rules and interest rates should apply to overpayments as to underpayments. One other commentor suggested that overpayments be credited against underpayments before assessing any penalties or interest.

In those instances where estimated payments exist, a payor's reported royalties are compared with estimated payments an interest is billed where royalties exceed estimate. In that process, overpayments and underpayments are netted at the payor level for Federal leases and at the lease level for Indian leases prior to calculating interest. In that instance where estimates do not exist, however, each AID is independently reviewed for late payment. There is no offsetting in that case.

One commentor suggested that the interest not be assessed on late payment or underpayments when they are not the fault of the lessee.

MMS agrees. If a late payment or underpayment is not the fault or the lessee in the judgment of MMS, assessment of interest will be waived.

One commentor suggested that the word "daily" be added after the word "computed" in paragraph (c) of the proposed rule.

MMS agrees that daily compounding of interest for late payments and underpayments is required by Section 6621 of the Internal Revenue Code.

Section 218.55 Interest payments to Indians. One commentor stated that since Indians will be receiving payments other than royalties, the term "monies" should replace the term "royalties" in paragraph (a) of § 218.55.

Revised paragraph (a) reads: "All interest collected from late payments on Indian tribal or allotted leases will be paid to the tribe or allottee."

Section 218.56 Assessments for incorrect or late reports and failure to report. Eight comments concerning proposed paragraphs (a) and (b) stated that the penalties were too severe because of the line-by-line cumulative/additive nature of the proposed system. One commentor stated that the penalties were too punitive per day and that they should be increased to $50.00 per day and be made mandatory, not discretionary.

The MMS has decided to retain the rule as proposed except for nomenclature changes believing that conscientious payors will not commit sufficient errors to become unduly burdened by assessments while careless payors will be encouraged to improve their paying and reporting by the levying of assessments in a consistent and progressive manner. The commentor believing the assessments were too small apparently failed to note the line-by-line cumulative/additive nature of the system.

Four commentors stated that this section should be deleted because any civil penalty authority of the Secretary related to royalty payment and accounting has been subsumed into and/or preempted by Section 109 of the Act.

MMS disagrees with this interpretation of the Act. Section 304(a) of the Act provides that the penalties and authorities of the Act are supplemental to, and not in derogation of, any penalties or similar authorities in other laws. The Secretary's authority for the assessments provided by §218.55 is derived not from the Act, but from the Secretary's responsibilities to administer the Mineral Leasing Act, the Outer Continental Shelf Lands Act, and other mineral leasing laws.

Section 218.103 Payments to States. One commentor stated it is not clear who is to pay the interest charge to the State. Would it be the entity disputing the monies held in suspense?

MMS has responsibility for paying interest on suspended amounts to the State.

One commentor stated that interest on suspended amounts should be calculated beginning at the time of deposit of the suspended amounts and not beginning on the calendar day that such amounts would normally have been paid to the States as shown in paragraph (c).

MMS disagrees. The Act [Section 104] is clear that interest accrues only after a payment is deemed late under the provisions of the legislation dealing with timely payments to the States and tribes.

Section 218.104 Exemption of States from certain interest and penalties. One commentor said the middle sentence of paragraph (b) as proposed should be deleted because it conflicts with §111(e) of the Act.

The commentor has misread §111(e). The first sentence of that section deals only with interest or penalties, e.g., treble damages, which might be assessed against the Government. The second sentence of §111(e) clearly
states that the State share in any
refunds of overpayments, whether a
result of settlement or pursuant to a
judicial or administrative order.
Paragraph (c) of § 218.104 carries out the
intention of the Act in that regard.
Part 219—Distribution and
Disbursement of Royalties, Rentals, and
Bonuses
Section 219.100 Timing of payment
to States. One commenter objected to
the definition of the last business day of
the month as including the first working
day of the succeeding month when the
month contains a weekend or holiday.
The commenter contends this is
contrary to Section 104(a) of the Act.
The MMS agrees and paragraph (b)
has been deleted.
Section 219.101 Receipts subject to
an interest charge. Implementation of
the provisions of this section is
dependent upon the availability of
appropriated funds.
One commenter stated that paragraph
(a) should be clarified by adding a new
paragraph (c) to read as follows:
“(c) Included in paragraph (a) are
revenues which cannot be disbursed to
the State because the payor/lessee
provided incorrect, inadequate, or
incomplete information to MMS, which
prevented MMS from properly
identifying the payment to the proper
recipient.”
MMS agrees. Paragraph “(c)” has
been added accordingly.
One commenter stated that the lessee
should not have to pay such interest
since it will already have been paid to
MMS. This section does not apply to lessees
or royalty payors.
Section 219.103 Payments to Indian
accounts. One commenter claimed that
the proposed “inequitable” changes in
payment date (§ 218.50(a)) are
compounded by the wording of this
section giving the Government an entire
month after warranting of funds by the
Treasury to effect the distribution of
funds to Indian accounts. This
commenter contends further that this is
counter to the Act (30 U.S.C. 1714),
Section 104(b).
It is the MMS policy to follow the
intent of Section 104(b) of the Act which
states that “Deposits of any royalty
funds derived from the production of oil
gas from, or allocated to, Indian lands
shall be made by the Secretary to the
appropriate Indian account at the
earliest practicable date after such
funds are received by the Secretary but
in no case later than the last business
day of the month in which such funds
are received.” § 218.103 reflects
this change.

Section 219.104 Explanation of
payments to States and Indian tribes.
One commenter stated that MMS should
provide Indian tribes the same
information that MMS is providing to the
BIA. That commenter also
recommended that the language used
should track with that of Section
219.104(a) by reading as follows:
“Explanation of payment reports shall
be provided to BIA on behalf of tribes
and individual Indian allottees, and
directly to tribes, not later than the last
business day of the month in which
MMS disburses the Indian share of
the royalties and related monies.”
Where the BIA has a direct trust
responsibility for a tribe or allottee,
mms provides data to BIA to support
mineral leasing payments. To duplicate
this information would create an
unnecessary burden on MMS and in
some instances on royalty payors. This
information is readily available to tribes
and allottees from BIA.
Part 228—Cooperative Activities With
States and Indian Tribes
Section 228.5 Delegation of
authority. One commenter felt that these
sections are ambiguous and might permit States or Indian tribes to assess
penalties directly instead of MMS.
MMS does not intend to delegate
penalty assessment authority to States
or Indian tribes.
One commenter expressed concern
about the problem of dual or even triple
oversight of lessee’s activities. The
commenter recommended MMS exercise
ultimate authority when the overseeing
entities are in disagreement.
MMS agrees with this comment and
has ultimate responsibility for
minimizing duplication. However, MMS
does not have responsibility for audits
being performed by the Office of the
Inspector General.
Section 228.8 Definitions. One
commenter stated that specific language
should be added to the definition of the
word “audit” to clarify the ability of a
State to extend the audit process to
providing the accounting transaction
involved in the recording and
distribution of Federal mineral royalties,
bonuses, and rentals.
MMS disagrees. MMS is subject to
audit only by the properly authorized
entities established by Congress and the
Executive Branch.
One commenter stated that the
reconciliation of leases prior to
conversion to AFS should be closed for
leases previously reported to Los
Angeles, Metairie, and Tulsa. Another
commenter stated that audits should not
be applied retroactively.
MMS agrees in part with the first
comment but disagrees with the second.
Account reconciliations for accounts
formerly managed by Los Angeles,
Metairie, and Tulsa have been
completed and all accounts reconciled.
These leases as well as all other Federal
leases will continue to be subject to
audit for a 6-year period for other
potential audit issues, other than
account balances, that may be found.
Section 228.100 Entering into an
agreement. Two commentors expressed
concern that audits conducted by States
or Indian tribes would not be properly
regulated by MMS.
MMS believes that adequate controls
do exist and that MMS will provide the
required oversight. Section 228.104 of
the proposed rule is now contained at
§ 228.100 of the final rule.
This section which was § 228.100 of
the proposed rule is now at § 228.101 in
the final rule.
Three commentors discussed
paragraph (d): One commenter stated
that any in-progress audit activity
should be completed prior to
termination by MMS of a cooperative
agreement in order to avoid duplication
of effort later.
MMS would endeavor to follow this
advice whenever possible but cannot
guarantee it can be accomplished in
every situation. Care will be taken to
avoid duplication of effort.
One commenter stated that there
should be provisions for “emergency”
termination of cooperative agreements
by MMS in a timeframe shorter than 120
days.
MMS feels that any such provisions
would be unfair to States or Indian
tribes as MMS had previously
determined that they were eligible and
able to conduct audits and
investigations under the cooperative
agreement.
One commenter recommended
changing the word “the” in the proposed
rule to “any” in the last sentence of
paragraph (d) of § 228.101. The
commenter suggested this change to
provide for the instance where no
submission has been made.
MMS agrees and has made the
suggested change in paragraph (d) of
§ 228.101 of the final rule.
Section 228.102 Establishment of
standards. This section which was
§ 228.101 of the proposed rule is now at
§ 228.102 in the final rule.
Two commentors suggested that a
sentence be added to read: “Where an
auditor is permanently assigned to a
lessee/payor, contact by the State and
Indian tribal auditors with the lessee/
payor shall be through the auditor in residence."

MMS agrees. The sentence is added.

One commentor stated support for the provision that State and Indian tribe standards must not be more stringent than those of MMS.

MMS agrees. All audit work performed under cooperative audits will follow MMS established standards.

One commentor suggested that draft standards established under this section be published in the Federal Register for public comment.

MMS intends to publish the standards for public comment.

Section 228.103 Maintenance of records. This section, which was § 228.102 of the proposed rule, is now at § 228.103 final rule.

One commentor contends that State requirements for recordkeeping must not be more stringent than MMS requirements.

MMS requirements will cover all cooperative audit activities.

Section 228.104 Availability of information. This section, which was § 228.103 of the proposed rule, is now at § 228.104 in the final rule.

Two commentors endorsed the wording of this section. Another commentor suggested it be reworded to more closely conform to the wording of the Act since there is potential for abuse.

The MMS has not changed the wording.

Section 228.105 Funding of cooperative agreements. One commentor requested that MMS put words in this section binding MMS to request budget appropriations for funding cooperative agreements.

Another commentor believed that such funding could significantly increase the costs of Government management and that such increases should be avoided. A third commentor believed that the funding limitation of 50 percent should be eliminated in favor of 100 percent Federal funding.

MMS disagrees with these three comments. The Act does not specifically establish a level of funding; and MMS feels that 50 percent of the total cost of a cooperative program supports the cooperative nature of activity, particularly since States share in the revenue derived from the audit. MMS cannot be bound to seek funding for activity as part of the annual budget process. MMS must follow the guidelines established by OMB and the Department in seeking appropriations, a process that cannot be interdicted by regulation.

Section 228.107 Eligible cost of activities. One commentor felt that under paragraph (a) the cost of services or activities that cannot be directly related to the support of the cooperative agreement should not be eligible for funding for Indian tribes.

The rule section already indicates this; no change is required.

Part 229—Delegation to States

Subpart A—General Provisions

One commentor submitted a number of general statements expressing concerns that the States may perform unnecessary, repetitious, and costly audits, unless properly monitored by MMS.

The MMS will regularly monitor the audit work being conducted by a State under the delegation of authority and, if it is found that a State has been abusing its authority, that authority can be revoked by MMS.

Section 229.100 Petition for delegation. Two commentors stated the regulation should use the term "Indian tribe and allottee," rather than "Indian tribe or allottee," since any delegation of authority by the Federal Government over Indian lands must have the approval of the tribal governing body. MMS agrees. This change has been implemented.

Section 229.103 Terms of delegation. One commentor stated that renewals of the delegations of authority must be the subject of public review.

MMS agrees. A renewal of a delegation would require the same public comment period and hearing process as that which accompanied an original petition for delegation of authority.

Section 229.105 Recordkeeping requirements. One commentor stated that recordkeeping requirements under the delegation to the State must be no more extensive than when these matters are directly under MMS jurisdiction.

All directives affecting recordkeeping during a State-conducted audit will be in compliance with MMS regulations and standards.

Section 229.106 Standards for carrying out delegated authority. One commentor stated that the MMS prescribed standards used for a State to carry out a delegation of authority must be made the subject of public review.

The standards will be published in a rulemaking for public review and comment before authority is delegated to a State.

Section 229.107 Reports from States. One commentor recommended that paragraph (b) of the proposed rule be deleted because it was the intention of Congress to have the Federal jurisdiction, and not the State, handle enforcement actions.

"MMS agrees. Enforcement actions are not delegated. Paragraph (b) as proposed has been eliminated."

Section 229.109 Reimbursement for costs incurred by a State under the delegation of authority. Two commentors recommended that this rule include language binding the MMS to request appropriations specifically designated for delegations of authority.

MMS disagrees. See comments made on §§ 228.105 and 228.106.

Section 229.120 Withdrawal of Indian lands from delegated authority. One commentor stated that if an Indian tribe or Indian allottee withdraws its delegation of authority to a State, it may cause an undue burden on industry and subsequently cause a duplication of audit work.

MMS will utilize audit workpapers and reports submitted to the date of termination and will make every effort to avoid duplication.

Part 241—Civil Penalties

Many comments were received on this proposed civil penalties part which suggested that MMS should revise the proposed language for consistency and clarity. More detail was suggested regarding the establishment of penalty amounts and the procedures for creation of a record. Although the penalty provisions are extensively prescribed by Section 109 of the Act, MMS has made revisions to the proposed regulations to provide more detail on notice procedures, penalty assessments, and hearings.

Subpart A—General Provisions

Section 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982. Section 241.20 was originally proposed as § 241.50 and remains unchanged except for the elimination of suspension of operations as a possible penalty. Upon reevaluation it was concluded that such an action would be detrimental not only to the lessee/operator but also to the government. This section authorizes the MMS to impose civil penalties for royalty management violations under the authority of the M.I.A, OCSLA, and other mineral leasing authorities. These authorities existed prior to the Act and continue to exist as an alternative and additional means of enforcement to the civil and criminal penalties in the Act. Assessment of penalties under these other statutes are subject to less rigorous procedural requirements than those prescribed by the Act. The designation of this section as § 241.20 of 'Subpart A should clarify that these..."
penalties are not penalties prescribed by the Act. It is not MMS’s intention, in most cases, to apply penalties authorized under this section concurrently or in addition to penalties authorized in succeeding sections of this part. These penalties could be used as an alternative or in situations where FOGORA penalties under § 241.51 do not apply by law, e.g., solid minerals.

Subpart B—Oil and Gas, General

Section 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982

Section 241.51 provides regulations implementing the more complicated civil penalty provisions of the Act. Pursuant to subsection (a), when MMS believes that any person has committed a violation, it will issue a notice of noncompliance specifying the nature of the violation and how it should be corrected. This is the notice required by Section 109(a) of the Act. Service of the notice will be by personal service or registered mail and will be deemed to occur when received or 5 days after mailing, whichever is earlier. As specified in Section 109 of the Act, unless the violation is corrected within 20 days (or such longer period as specified in the notice) from the date of service, the person is liable for a penalty of up to $500 per day for each violation, dating from the date the notice was served. If the violation is not corrected during 40 days, the liability increases to a maximum of $5,000 per day per violation, dating from the date the notice was served.

The regulations provide in paragraph (a)(3)(iii) that if the person served with the notice does not correct the violation within 20 days (or as specified in the notice), he may request a hearing on the record, as provided by the Act, by filing a request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior. However, if the violation is corrected within the prescribed period, under the regulations no penalties may be assessed under Section 109(a) of the Act. Consequently, no hearing on the record need be provided. Accordingly, if the violation is corrected, the only available appeal will be to the MMS Director and then the Board of Land Appeals, in accordance with the appeals procedures in 30 CFR Part 243.

Subsection (b) of new § 241.51 provides for issuance of a notice of noncompliance for intentional violations. In such circumstances, penalties are increased to $10,000 per day and no period for correction need be provided before liability begins. Pursuant to the Act, penalties accrue from the date the violation began, not the date the notice is served.

If the person who received a notice of noncompliance does not correct the violation within the prescribed period, or if a notice of noncompliance is issued for an intentional violation, then the person is liable for penalties. Pursuant to § 241.51(c), MMS will issue a penalty notice setting forth the amount of penalty applicable for each violation. By way of illustration, if the maximum penalty for a violation is $500 for the first 20 days, and later increases to $5,000 retroactive to the first day of the notice of noncompliance for failure to correct the violation within 40 days, MMS may elect in the penalty notice to set the actual penalty for the particular violation below those maximums. MMS will determine the applicable penalty by taking into account the severity of the particular violation and violator’s noncompliance history. Persons who consistently violate the applicable rules will receive higher penalties.

Subsection (d) of § 241.51 has been added to make it clear that any penalties assessed under § 241.51 will be in addition to interest which is owed on any nonpayment or underpayment of royalties and in addition to assessments for late or incorrect reporting. The interest and late or incorrect reporting provisions are in Part 218 which is also incorporated in this rulemaking.

If a person served with a notice of noncompliance requests a hearing, subsection (e) provides that liability for penalties will continue to accrue on a daily basis until the person corrects the violation set forth in the notice of noncompliance. For example, if the violations were nonpayment of royalties on an oil and gas lease, penalties would continue to accrue until the royalties in dispute were received by MMS.

Subsection (f) provides further that the Director, MMS, may in certain circumstances suspend the requirement to correct the violations during appeal and accept a bond in lieu of payment. Such a suspension is at the discretion of the Director and will be granted only if the Director determines that suspension will not be detrimental to the lessor and if the lessee submits and MMS accepts a suitable bond. The bond amount must be sufficient to cover the underlying violations, penalties accrued up to the date the bond is accepted, and interest.

MMS may require the bond to be increased when there are increases in the amount of the underlying obligation, penalties or interest. In most instances, MMS will not grant suspensions since the effectiveness of MMS’s royalty collection efforts is premised on compliance with its orders during appeal. See also the discussion of § 243.2 in a later section of this preamble.

Subsection (f) sets forth the applicable procedures when a hearing on the record is requested. The hearing will be conducted by an Administrative Law Judge (ALJ) of DOT’s Office of Hearings and Appeals, who will issue a decision in accordance with the evidence presented and applicable law. The ALJ’s decision may be appealed to the Interior Board of Land Appeals. If the ALJ’s decision is not appealed, it becomes a final order. If there is an appeal to the Board, its decision becomes a final order which may be appealed to the District Courts in accordance with subsection (i).

Subsection (g) applies to situations where the person who has received a notice of noncompliance has not paid pursuant to the MMS order which initiated the notice and has not requested a hearing on the record. Pursuant to section 109(e) of the Act, that person has been “given the opportunity for a hearing on the record” and penalties may be assessed. The assessment will be in the form of an order issued by the MMS Director, with the applicable penalties determined in accordance with the penalty notice previously issued. The penalty assessment will be a final order and, pursuant to the terms of the Act, no further appeal is available since a hearing was not requested when the opportunity was provided. Accordingly, failure to pay the assessment will subject the person to collection action pursuant to Section 109(k) of the Act and subsection (j) of § 241.51 and any other remedies MMS may have available.

Subsection (h) authorizes the Secretary to compromise or reduce civil penalties, as provided in Section 109(g) of the Act.

Section 241.51(f) and (j) set forth the procedures for judicial review and court enforced collection of assessments. The regulations follow the detailed provisions of Section 109(j) and (k) of the Act.

Section 241.52 implements Section 110 of the Act. Any person who commits an act for which a penalty is authorized by Section 109(d) of the Act also will be subject to criminal penalties.

Part 243—Appeals-Royalty Management Program

Section 243.1 Procedures. This section provides that most decisions and orders of the Royalty Management Program may be appealed in accord
with the appeal procedures in 30 CFR Part 290. The exception is appeals from FOGRMA penalty assessment orders which must be appealed with the specific appeal procedures of Part 241.

Section 243.2 Effectiveness of Orders or Decision Pending Appeals. This section continues MMS's longstanding practice that compliance with its decisions and orders is not suspended by reason of an appeal being taken. The MMS Director (or the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved) may grant a suspension of an order pending appeal, when, in his or her discretion, it is determined that suspension will not be detrimental to the lessor and the recipient of the order has provided an acceptable bond or other surety adequate to protect MMS. In almost all instances MMS will not grant suspensions, since the effectiveness of MMS's royalty collection efforts is premised on compliance with orders during appeal. Only in the unusual circumstance will MMS grant suspension pending the appeal process. This provision is being made retroactive to orders and decisions issued by the Royalty Management Program after August 12, 1983. The retroactive effectiveness is necessary for consistent application of MMS's procedures because on that date 30 CFR Section 221.66, the predecessor to new Section 243.2, was unintentionally removed from MMS's regulations along with other rules which were removed by virtue of the transfer of MMS's onshore operational program to the Bureau of Land Management (48 FR 36582, August 12, 1983).

Executive Order 12291

The Department has determined that this rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291. Cooperative agreements and delegations to States have minimal economic effect, as this arrangement primarily addresses who will perform the functions, i.e. the Secretary, State, or Indian tribe.

The cost to the Government in light of the additional mineral revenues generated as a result of audit recoveries has, based on experience, been proven to be cost beneficial and is expected to be so under the provisions of these regulations.

Regulatory Flexibility Act

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act. Although the rule establishes certain penalties, if the lessee operator or royalty payor complies with the rules, there will be no penalties. The cost or economic effect of this regulation is solely in the hands of the lessee.

Paperwork Reduction Act of 1980

Although information collection requirements are noted in several parts of this rule, it is done so only for reaffirmation. The purpose of the Act is stated to be, in part, to clarify, reaffirm, expand, and to define the responsibilities and obligations of lessees, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf.

The information collection requirements noted in this rule have been previously authorized or there is no need for authorization as discussed by part/section as follows:

Section 210.51. The information collection requirements contained in this section has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq., and assigned clearance number 1010-0033.

Section 210.52. The information collection requirement contained in §210.52 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1010-0022.

Sections 212.50 and 212.51. In the preamble to the proposed rule, these information collection requirements were incorrectly included as being approved under OMB clearance number 1010-0033. The information collection requirements for §§212.50 and 212.51 have been approved by the OMB under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010-0022 and 1010-0040.

Sections 228.10 and 229.10. The information collection requirements contained in Parts 228 and 229 will involve fewer than ten (10) respondents annually and consequently do not require approval by the Office of Management and Budget under U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. No detailed statement in accord with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects

30 CFR Part 210

Government contracts, Reporting requirements, Mineral royalties, Continental shelf, Public lands-mineral resources, Geothermal energy.

30 CFR Part 212

Coal, Reporting requirements, Government contracts, Mineral royalties, Public lands-mineral resources.

30 CFR Part 217

Coal, Government contracts, Mineral royalties, Reporting requirements.

30 CFR Part 218

Government contracts, Mineral royalties, Continental shelf, Public lands-mineral resources, Coal, Geothermal energy.

30 CFR Part 219

Mineral royalties, Intergovernmental relations, Penalties.

30 CFR Part 220

Freedom of information, Intergovernmental relations, Investigations, Mineral royalties.

30 CFR Part 221

Intergovernmental relations, Investigations, Mineral royalties.

30 CFR Part 241

Government contracts, Reporting requirements.

30 CFR Part 243

Appeals—Royalty Management Program.

Title 30, Chapter II, of the Code of Federal Regulations is amended as set forth below.


J. Steven Griles
Deputy Assistant Secretary for Land and Minerals Management

PART 210—FORMS AND REPORTS

1. The authority for Part 210 reads as follows:

must accompany all payments to MMS for royalties and, where specified, for rents on nonproducing leases. Payors who submit Form MMS-2014 data on magnetic tape will not be required to submit the form itself. Completed Form MMS-2014's (or magnetic tape) for royalty payments including those covering payments by electronic funds transfer, are due by the end of the month following the production month. Where applicable, completed Form MMS-2014's for rental payments are due no later than the anniversary date of the lease. This section does not prohibit payors from making early payments voluntarily.

§210.53 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 212—RECORDS AND FILES MAINTENANCE

4. 30 CFR Part 212, Subpart B, is amended by adding §§ 212.50, 212.51, and 212.52, to read as follows:

Subpart B—Oil and Gas, General

§212.50 Required recordkeeping and reports.

All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

§212.51 Records and files maintenance.

(a) Records. Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices and orders, and by the various parts of this Chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to the Minerals Management Service (MMS) for use in its Auditing and Financial System (AFS) and Production Accounting and Auditing System (PAAS).

(b) Period for keeping records. Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records generated during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

(c) Inspection of records. The lessee, operator, revenue payor, or other person required to keep shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records. 

§212.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 217—AUDITS AND INSPECTIONS

5. 30 CFR Part 217 Subpart B, is amended by adding §§ 217.50 and 217.51, and 217.52, to read as follows:

Subpart B—Oil and Gas, General

§217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope,
nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

§ 217.51 Lease account reconciliation.

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

§ 217.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

6. The authority for Part 218 reads as follows:


7. 30 CFR Part 218, Subpart A, is amended by adding §§ 218.60, 218.51, 218.52, 218.53, 218.54, 218.55, 218.56, and 218.57, to read as follows:

Subpart B—Oil and Gas, General

Sec.

218.50 Timing of payment.

218.51 Method of payment.

218.52 Designated payor.

218.53 Division of interests. [Reserved]

218.54 Late payments and underpayments.

218.55 Interest payments to Indians.

218.56 Assessments for incorrect or late reports and failure to report.

218.57 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

Subpart B—Oil and Gas, General

§ 218.50 Timing of payment.

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Payments made on a Bill for Collection (Form DI-1040b) are due as specified by the Bill. Bills for Collection will be issued and payable as final collection actions.

(c) All payments to MMS are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized MMS official.

§ 218.51 Method of payment.

(a) Payment of royalties. (1) All payors whose aggregated royalty liability to the MMS on the payment due date totals $50,000 or more, must make payment by electronic funds transfer (EFT), utilizing the Federal Reserve Communications System link to the Treasury Financial Communications System, unless otherwise directed by the Secretary. Early payment by other than EFT of a portion of the aggregated royalty liability to avoid remittance by EFT on the payment due date is not permitted. Such early payments are permitted regardless of amount but must be remitted by EFT. Payments to MMS by EFT shall begin only after the payor has received instructions from the MMS Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

(b) Each payor, whose aggregated remittance for royalties on payment due date is less than $50,000, must use one of the following payment instruments:

1. Federal Reserve check.
3. Money Order.
5. Cashier’s check.
6. Certified check.
7. Electronic Funds Transfer.
8. All payment instruments except EFT should be inscribed payable to "Department of the Interior—MMS."

(d) Payment of rentals. (1) Payment of rentals to MMS-RMAC (other than the first year rentals) must be made by one of the methods shown in paragraph (b) of this section. First year rentals from offshore leases are paid in accordance with § 218.155.

(e) Where to pay. (1) The mailing address for Form MMS-2014 and the applicable payment is: Royalty Management Program, Minerals Management Service P.O. Box 5810 TA Denver, Colorado 80217. Use P.O. Box 5640 T.A. with the above address to send payments for Federal non-producing leases not required to be reported on the Form MMS-2014 report.

(2) Payments received after 4:00 p.m. mountain time, are considered next day receipts.

(f) General payment information. (1) Payments for offshore and onshore Federal leases shall be segregated from payments for Indian leases. All payments shall be made by one of the methods shown in paragraph (b) of this section. For payments made by EFT, the deposit message shall include information as prescribed by the RMAC.

(2) For Indian payments by check, the following instructions are applicable:

(i) For Indian allotted leases, payments shall be aggregating and identified on a single check for each respective BIA agency/area office having jurisdiction over the lease(s) for which the payment is made.

(ii) For Indian tribal leases, payments shall be segregated and identified for each respective Indian tribe for whom the royalty is owed.

(iii) When payments are made on an aggregated basis (single check), the payment identification required in paragraphs (f)(2)(i) and (ii) of this section shall be provided in a format to be specified by MMS.

§ 218.52 Designated payor.

(a) When the lessee or revenue payor assigns any paying responsibility to any other entity, MMS must be notified within 30 days of the assignment.

(b) MMS may, by order, designate a lessee or revenue payor on a lease as the single payor for all revenues due and owing from that lease.

§ 218.53 Division of interests. [Reserved]

§ 218.54 Late payments and underpayments.

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments and underpayments shall be at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest will be charged only on the amount of the payment not received.

2. The interest charge on late payments and underpayments shall be assessed on unpaid and underpaid amounts from the date the amounts are due.
Interest will be charged only for the number of days the payment is late.
(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

§ 218.55 Interest payments to Indians.
(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.
(b) Any disbursement of Indian mineral revenues not made by the due date as required in §219.103 of this chapter shall accrue interest.
(c) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.
(d) The interest shall be payable only for the number of days the disbursement is late.

§ 218.56 Assessments for incorrect or late reports and failure to report.
(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.
(b) An assessment of $100.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.
(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS-2014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).
(d) [Reserved.]
(e) An assessment under this section shall not be shared with a State, Indian tribe, or Indian allottee.

§ 218.57 Definitions.
Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

§ 218.102 [Amended]
8. 30 CFR Part 218, Subpart C, is amended by removing paragraphs (c) and (d) of §218.102 and by redesignating paragraph (e) as paragraph (c) of that section.
9. 30 CFR Part 218, Subpart C, is amended by adding §218.103, 218.104, and 218.105, to read as follows:

Subpart C-Oil and Gas, Onshore.

§ 218.103 Payments to States.
(a) Any amount that is payable by MMS to a State but is not paid on the due date, as specified in §219.100 of this chapter, or that is held in a suspense account pending resolution of a dispute as specified in §219.101 of this chapter, shall accrue interest payable to the State.
(b) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.
(c) Interest shall be computed only for the number of days the disbursement is late. In the case of suspended amounts subject to interest, it shall be computed beginning with the calendar day following the day that the monies normally would have been paid to the State had they not been in suspense.

§ 218.104 Exemption of States from certain interest and penalties.
(a) States are exempt from being assessed for any interest or penalties found to be due against the Department of Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, or any regulation issued by the Secretary of Energy thereunder concerning the certification or processing of crude oil taken in-kind as royalty by the Secretary.
(b) Any State shall be assessed for its share of any overcharge resulting from a determination that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973, as amended. Each State's share shall be assessed against monies owed to the State. Such assessment shall be first against monies owed to such State as a result of royalty audits prior to January 12, 1983, the enactment date of the Federal Oil and Gas Royalty Management Act of 1982, then against other monies owed. The State shall be liable for any balance.

(c) A State's liability for repayment of an overcharge under this section shall exist for any amounts resulting from a judgment in a civil suit or as the result of settlement of a claim through a negotiated agreement. State liability would be offset against future mineral revenue distributions to the State.

§ 218.105 Definitions.
Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

Subpart A-General Provision [Reserved]

Subpart B-Oil and Gas, General [Reserved]

Subpart C-Oil and Gas, Onshore

§ 219.100 Timing of payment to States.
A State's share of mineral leasing revenues shall be paid to the State not later than the last business day of the month in which the United States Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

§ 219.101 Receipts subject to an interest charge.
(a) Subject to the availability of appropriations, the Minerals Management Service (MMS) shall pay the State its proportionate share of any interest charge for royalty and related monies that are placed in a suspense account pending resolution of matters which will allow distribution and disbursement. Such monies not disbursed by the last business day of the month following receipt by MMS shall accrue interest until paid.
(b) Upon resolution, the suspended monies found due in paragraph (a) of this section, plus interest, shall be disbursed to the State under the provisions of §219.100.
(c) Paragraph (a) of this section shall apply to revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS which prevented MMS from properly identifying the payment to the proper recipient.
§ 219.102 Method of payment.

The MMS shall disburse royalties to a State either by Treasury check or by Electronic Funds Transfer (EFT). Should the State prefer to receive its payment by EFT, it should request this payment method in writing to the Minerals Management Service, P.O. Box 5760, Denver, Colorado 80217.

§ 219.103 Payments to Indian accounts.

Mineral revenues received from Indian leases shall be transferred to the appropriate Indian accounts managed by the Bureau of Indian Affairs (BIA) for allotted and tribal revenues. These accounts are specifically designated Treasury accounts. Revenues shall be transferred to the Indian accounts at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which revenues are received by the MMS.

§ 219.104 Explanation of payments to States and Indian tribes.

(a) Payments to States and BIA on behalf of Indian tribes or Indian allottees discussed in this part shall be described in Explanation of Payment reports prepared by the MMS. These reports will be at the lease level and shall include a description of the type of payment being made, the period covered by the payment, the source of the payment, sales amounts upon which the payment is based, the royalty rate, and the unit value. Should any State or Indian tribe desire additional information pertaining to mineral revenue payments, the State or tribe may request this information from the MMS.

(b) The report shall be provided to: [1] States not later than the 10th day of the month following the month in which MMS disburses the State's share of royalties and related monies; [2] the BIA on behalf of tribes and Indian allottees not later than the 10th day of the month following the month the funds are disbursed by MMS.

(c) Revenues that cannot be distributed to States, tribes, or Indian allottees because the payor/lessee provided incorrect, inadequate, or incomplete information, preventing MMS from properly identifying the payment to the proper recipient, shall not be included in the report until the problem is resolved.

§ 219.105 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

12. 30 CFR Part 228 is amended by adding Subparts A, B, C, and §§ 228.1, 228.2, 228.4, 228.5, 228.6, 228.10, 228.100.

228.101 228.102, 228.103, 228.104, 228.105, 228.107, and 228.108, to read as follows:

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

Subpart A—General Provisions

Sec.

228.1 Purpose.

228.2 Policy.

228.4 Authority.

228.5 Delegation of authority.

228.10 Information collection requirements.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

228.100 Entering into an agreement.

228.101 Terms of agreement.

228.102 Establishment of standards.

228.103 Maintenance of records.

228.104 Availability of information.

228.105 Funding of cooperative agreements.

228.106 Eligible cost of activities.

228.107 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

Authority: Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.)

Subpart A—General Provisions

§ 228.1 Purpose.

It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

§ 228.2 Policy.

It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe finds it to be in the best interest of the State or tribe to carry out such activities. Activities to be examined include reconciliation of lease accounting with the Production Accounting and Auditing System, the official accounting systems for royalty reporters and payors maintained by the MMS. The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because there are fewer than ten respondents annually.

governments has been delegated to the Director of the Minerals Management Service (MMS).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either MMS or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with MMS to perform certain functions without affecting its ability to enter into a cooperative agreement with either MMS or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

§ 228.6 Definitions.

For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

Audit means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the Auditing and Financial System and the Production Accounting and Auditing System, the official accounting systems for royalty reporters and payors maintained by the MMS.
Subpart B—Oil and Gas, General
[Reserved]

Subpart C—Oil and Gas, Onshore

§ 228.100 Entering into an agreement.
(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of MMS.
(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information:
(1) Type of eligible activities to be undertaken.
(2) Proposed term of the agreement.
(3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.
(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.

§ 228.101 Terms of agreement.
(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable or additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.
(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.
(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.
(d) The MMS may commence termination of an agreement by giving a 120-day written notice of intent to terminate. MMS shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe shall be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60 days has been reviewed by MMS for content or merit.
(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

§ 228.102 Establishment of standards.
The MMS, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall be no more stringent than those applicable to similar activities of the MMS. The States and Indian tribes shall coordinate their planned auditing activities with MMS. Where an MMS audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the MMS auditor in residence.

§ 228.103 Maintenance of records.
The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of DOI including the Office of the Inspector General.

§ 228.104 Availability of information.
(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to MMS, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.
(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.
(c) Information will be provided by MMS on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

§ 228.105 Funding of cooperative agreements.
(a) The Federal share of funding eligible activities under a cooperative agreement will be limited to not more than 50 percent share of the cost of eligible activities under the terms of the cooperative agreement. The State or tribe may provide its 50 percent share either in cash or in kind. In kind contributions must be found eligible under the terms of the agreement and are subject to examination and evaluation by the Department.
(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

§ 228.107 Eligible cost of activities.
(a) Only costs directly associated with eligible activities undertaken by the State or Indian Tribe under the terms of a cooperative agreement will be eligible for sharing. Costs of services or activities which cannot be directly related to the support of the cooperative agreement will not be eligible for Federal funding or for inclusion in the State's 50 percent share or in the Indian Tribe's share.
(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.
§ 229.100 Petition for delegation.
(a) All States and Indian tribes may petition the Secretary to carry out the functions to be delegated to the State or tribe under the delegation of authority.

§ 229.101 Fact-finding and hearings.
(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out fact-finding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the Federal Register and other appropriate media within the State, shall hold one or more public hearings to determine whether:
(1) The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the purposes of this Part (30 U.S.C. 1735);
(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;
(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary, in accordance with the requirements at 30 U.S.C. 1733;
(4) The State's plan to carry out the delegated authority will be in accordance with the MMS standards;
(5) The State's plan to carry out the delegated authority will be coordinated with MMS and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

§ 229.102 Hearings.
A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.
§ 229.103 Terms of delegation.

(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in § 229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

§ 229.104 Evidence of Indian agreement to delegation.

In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

§ 229.105 Recordkeeping requirements.

The State shall maintain all records, working papers, reports, and correspondence of individual lessees, operators, and interest holders for review and inspection by representatives of the Secretary including the Office of the Inspector General. All materials must be maintained for a period specified by the Department and shall be maintained by the State in a separate record or file maintenance system in a safe and secure fashion.

§ 229.106 Standards for carrying out delegated authority.

The Department, after proper rulemaking procedure, shall establish uniform minimum acceptable standards for carrying out activities under the provisions of this part. The standards shall be no more stringent than those applicable to similar activities of the Department. Standards shall be promulgated by rule as soon as practicable after the effective date of final issuance of these regulations.

§ 229.107 Reports from States.

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken,

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

§ 229.108 Examination of the State activities under delegation.

(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

§ 229.109 Reimbursement for costs incurred by a State under the delegation of authority.

(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI on a quarterly basis a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of 30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

§ 229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.

Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1733. MMS shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

§ 229.120 Withdrawal of Indian lands from delegated authority.

If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

PART 241—Penalties

14. The authority for Part 241 reads as follows:

§ 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.

(a)(1) Notice of noncompliance. If the MMS believes that any person has failed or refused to comply with any statute, regulation, rule, order, lease, or permit governing the determination and collection of royalties on Federal or Indian lands or on the Outer Continental Shelf, the MMS may issue a notice of noncompliance which shall set forth the nature of the violation and the remedial action required.

(2) The notice of noncompliance shall be served by personal service by an authorized representative of the MMS or by registered mail. Service by registered mail shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(3) When a notice of noncompliance is issued by the MMS under this section:
   (i) Unless the violation is corrected within 20 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $500 per day for each day such violation continues, dating from the date of service of the notice;
   (ii) Unless the violation is corrected within 40 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $5,000 per day for each day such violation continues;
   (iii) If the person upon whom the notice is served does not correct the violation within 20 days (or such longer time as specified in the notice) from the date that the notice is served, such person may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.
   (iv) If the person served with a notice of noncompliance requests a hearing on the record pursuant to paragraph (a)(3)(iii) of this section, penalties shall accrue each day from the date of service to file a written request for a hearing on the record until the person corrects the violations.

(b)(1) Notice of noncompliance for intentional violations. In addition to the provisions of paragraph (a) of this section, the MMS may issue a notice of noncompliance for intentional violations, which shall set forth the nature of the violation and the remedial action required, to any person who—
   (i) Knowingly or willfully fails to make any payment due by the date as specified by statute, rule, order, or terms of the lease;
   (ii) Knowingly or willfully fails to submit or submits false, inaccurate, or misleading data to the MMS in support of a royalty, rental, bonus, or other payment; or
   (iii) Knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) A person served with a notice of noncompliance for an intentional violation under this paragraph shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(3) The notice of noncompliance for intentional violation shall be served in accordance with paragraph (a)(2) of this section.

(4) A person who has been served with a notice of noncompliance for intentional violation issued pursuant to this subsection shall have 20 days from the date of service to file a written request for a hearing on the record provided for in paragraph (a)(3)(iii) of this section.

(c) Penalty notice. The MMS shall issue a penalty notice to any person subject to penalties under this section. The penalty notice shall set forth the amount of the penalty applicable for each day that the violation continues. The penalty amount shall be determined by MMS taking into account the severity of the violation and the person's history of noncompliance. The penalty for each day that a violation continues shall not exceed the amounts specified in paragraphs (a) and (b) of this section as applicable.

(d) Penalties imposed under this section shall be in addition to interest assessed on payments not received by the MMS by the due date and assessments for later or incorrect reporting pursuant to Part 218 of this Chapter.

(e) If the person served with a notice of noncompliance requests a hearing on the record pursuant to paragraph (a)(3)(iii) or subparagraph (b)(4) of this section, penalties shall accrue each day until the person corrects the violations set forth in the notice of noncompliance.
The Director, MMS, may suspend the requirement to correct the violations pending completion of the hearings provided by this section, but only if the Director, MMS, suspends the obligation in writing, and then only upon a determination, at the discretion of the Director, that such 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 any disputed amounts plus accrued penalties and interest. The MMS may require, at any time, adjustment in the amount of the bond for increases in the amount of the underlying obligations determined by MMS to be due, for penalties or for interest.

(f) Hearing. If a person served with a notice of noncompliance has requested a hearing on the record in accordance with subparagraphs (a)(3)(iii) or (b)(4) of this section, the hearing shall be conducted by an Administrative Law Judge (Departmental), Office of Hearings and Appeals. After the hearing, the Administrative Law Judge shall issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the Administrative Law Judge may appeal that decision to the Interior Board of Land Appeals in accordance with the procedures set forth in 43 CFR Part 4. A decision by the Interior Board of Land Appeals shall be subject to judicial review in the United States District Court for the judicial district in which the violation allegedly took place. Review by the District Court shall be only on the administrative record and not de novo. Such action shall be barred unless filed within 90 days after the final order.

(g) The Director of the MMS shall issue an order assessing the penalty, in accordance with the penalty notice, against any person subject to penalties under paragraphs (a) or (b) of this section who does not request a hearing on the record as provided in paragraphs (a)(3)(iii) or (b)(4) of this section. The penalty assessment must be paid within 30 days of its issuance and shall be a final order subject to collection pursuant to the provisions of paragraph (j) of this section.

(h) On a case-by-case basis the Secretary, or his/her authorized representative, may compromise or reduce civil penalties under this section. The amount of any penalty under this section, as finally determined, may be deducted from any sums owing by the United States to the person charged.

(i) Any person who has requested a hearing in accordance with paragraph (a) or (b) of this section within the time prescribed for such a hearing and who is aggrieved by a final order may seek review of such order in the United States District Court for the judicial district in which the violation allegedly took place. Review by the District Court shall be only on the administrative record and not de novo. Such action shall be barred unless filed within 90 days after the final order.

(j) If any person fails to pay an assessment of a civil penalty under this section after the order making the assessment has become a final order, and if such person has not filed a petition for judicial review in accordance with paragraph (i) of this section, or, after a court, in an action brought under this section, has entered a final judgment in favor of the Secretary, the Court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in paragraph (i) of this section. The amount of any penalty, as finally determined, may be deducted from any sum owing by the United States to the person charged.

§ 241.52 Criminal penalties.

Any person who commits an act for which a civil penalty is provided at 30 U.S.C. 1719 shall be subject to criminal penalties as provided at 30 U.S.C. 1720.

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

17. 30 CFR Part 243 is amended by adding Subpart A to read as follows:

Subpart A—General Provisions

Sec. 243.1 Procedure.

243.2 Effectiveness of orders or decisions pending appeal.


§ 243.1 Procedure.

Except as may otherwise be provided in Part 241 hereof, an order or decision issued under regulations administered by the Royalty Management Program may be appealed in accordance with the provisions of Part 290 of this Chapter.

§ 243.2 Effectiveness of orders or decisions pending appeals.

Compliance with any orders or decisions, issued by the Royalty Management Program after August 12, 1983, including payments of additional royalty, rents, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, MMS, (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director or Deputy Associate Secretary for Indian Affairs, that such 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.

[FR Doc. 84-25018 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-MR-M
Part VIII

Department of the Interior

Bureau of Land Management

43 CFR Part 3160
Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982; Final Rule
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 3160

(Circular No. 2553)

Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982

AGENCY: Bureau of Land Management; Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking revises the existing regulations by adding new provisions pertaining to operations on onshore Federal and Indian (except Osage) oil and gas leases to implement those portions of the Federal Oil and Gas Royalty Management Act of 1982 which apply to onshore field operations. This final rulemaking does not address those portions of the Federal Oil and Gas Royalty Management Act pertaining to onshore leasing. Outer Continental Shelf operations or revenue accountability, except to the extent that the onshore leasing revenue accountability provisions affect or interact with field operations.

EFFECTIVE DATE: October 22, 1984.

ADDRESS: Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Eddie R. Wyatt (202) 353-2133 or Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking that would revise the oil and gas operating regulations to incorporate the operational requirements of the Federal Oil and Gas Royalty Management Act was published in the Federal Register on September 10, 1983 (48 FR 41783), with a 45-day comment period. During the comment period, comments were received from 27 different sources: 15 from oil and gas companies; 4 from Indian tribes; 3 from oil and gas industry associations; 1 from an Indian tribal association; 1 from a wildlife association; 1 from a State government; and 2 from Federal agencies. All of the comments were given careful consideration during the decisionmaking process on the final rulemaking. If a change was made in the final rulemaking due to comments, that change is described in this preamble. If no change was made, even though requested by the comments, the reason for not accepting the change is discussed.

General

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) focuses primarily on royalty and rental collection, but also includes provisions relating to on-the-ground operations. As a result of Secretarial Order No. 3087 dated December 3, 1982, and amended on February 7, 1983, the Bureau of Land Management was delegated authority to administer onshore minerals operations and the Minerals Management Service was delegated authority to administer accountability functions. Therefore, the Service has published a companion proposed rulemaking, which amends Title 30 of the Code of Federal Regulations, which addresses the revenue accountability functions affected by the Federal Oil and Gas Royalty Management Act. The Bureau, in addition to this rulemaking, published on February 3, 1984, a proposed rulemaking (48 FR 4217) which addresses the lease reinstatement provisions of Title IV of the Act. The changes made by this rulemaking, while substantial, relate to only a portion of the Act and are limited in scope to the sections of the Act that affect operation regulations.

Several comments suggested that the 45-day comment period was not sufficient to permit in-depth analysis of the substantial revisions made by the proposed rulemaking in the existing oil and gas operation regulations and requested an extension of the comment period. The requests for an extension of the comment period were considered, with attention being given to the complexity of the changes made by the proposed rulemaking. A significant extension was not requested because it is important that the Federal Oil and Gas Royalty Management Act regulations of the Bureau and Service be issued at approximately the same time, and be made effective as soon as possible. Further, the comments received indicate that the public did, in fact, have enough time to do a careful and thorough analysis of the rulemaking. These efforts are appreciated.

One comment raised several policy questions, i.e., the recourse available to an Indian Tribe if the Bureau of Land Management does not conduct inspections that are satisfactory to the Tribe, the presumed denial of proprietary data to a Tribe under the proposed revision of the confidentiality section, the level of communication between the Minerals Management Service and the Bureau, and the distribution of civil penalty funds. The comment suggested that the final rulemaking contain provisions covering each of these elements. With the exception of the provision for safeguarding proprietary information, which is discussed more fully in response to those comments specifically directed to § 3162.8, these questions are policy issues that are more properly considered in other areas rather than as part of this final rulemaking. This final rulemaking prescribes standards for lessees and operators to follow in conducting operations on Federal and Indian oil and gas leases and the Bureau's responsibility for inspecting those operations. Other questions should more properly be addressed in other ways. The rulemaking should not contain additional, inappropriate issues.

Several comments suggested that the proposed rulemaking, particularly with regard to the administrative penalties, exceeds the intent of Congress and the specific provisions of the Federal Oil and Gas Royalty Management Act. These comments suggested that the inclusion of items in a listing of common violations does not in and of itself constitute a sufficient reason for those listed items to be considered violations. In preparing the proposed rulemaking and this final rulemaking, the Department of the Interior made every effort to have the rulemaking language track the language of the Act. As part of the preparation effort, consideration was given to the legislative history of the Act in those instances where the provisions of the Act were not clear. It is agreed that the listing of certain actions may, in some instances, reflect an interpretation of the Act. If, in and of itself, constitute sufficient reason for that action to be considered a violation. However, each of the violations included in the list of violations currently in use is derived from other regulations, orders or lease terms. Generally, any citation for a violation issued to a lessee will include a reference to the specific provisions violated. The administrative penalties are modified by the final rulemaking and those modifications are discussed in detail later in this preamble.

One comment suggested that the penalty level in the final rulemaking be related to the lease production level to preclude penalties being assessed on a marginally economic lease, thus causing premature abandonment. The suggestion has not been adopted in the final rulemaking because it is not proper to have a dual standard of compliance based on lease economics. However, in response to this comment and others relating to the excessive nature of the penalty provisions in the proposed rulemaking, the final rulemaking
includes a cap on the maximum amount of each level of civil penalty. This change will prevent a penalty from becoming overly disproportionate to the original violation while remaining an effective deterrent to continued noncompliance. The final rulemaking includes a cap on most penalties of 60 days from the date of notice or report and on other penalties of 20 days from such date. If corrective action has not occurred when any of the maximums are reached, lease cancellation action shall be initiated. When a transporter’s penalty reaches the maximum, action shall be taken to terminate its right to remove and transport productions from Federal and Indian leases within a specified area for a specified period of time.

Another comment discussed the mechanics of filing an application for a permit to drill and the amount of paperwork involved with that application. The provisions of the existing regulations relating to obtaining a permit to drill were not included in the proposed rulemaking. This being the fact, it would be inappropriate to consider any change in those provisions as part of this final rulemaking. However, most of the issues discussed in the comment are addressed in the publication of Operating Order No. 1 in the Federal Register of October 21, 1983 [48 FR 56220]. Thus the issues should have been discussed in connection with that document.

One comment advised that a number of elements were missing from the existing regulations in 43 CFR Part 3160 and were not included in the proposed rulemaking. The comment recommended that these missing elements be added to this final rulemaking, i.e., requiring the filing of run tickets, meter proving data, rate change and documentation of theft, venting and flaring gas; setting forth the responsibility of sub-lessees; monthly reconciliation of accounts; annual audits; role of Indian tribes in joint audits; reference to the Production Accounting and Audit System and the Automated Financial System; acknowledging the power of the tribal/State government as lessor in inspections and investigations; and collecting of interest and penalties on underpaid royalties. Most of the foregoing points are within the jurisdiction of the Minerals Management Service and are covered in the companion rulemaking being issued by the Service. Responsibilities of assignees (sub-lessees) and adjustments of royalty rates on Indian lands fall under the jurisdiction of the Bureau of Indian Affairs and are currently included in 25 CFR Parts 211, 212, 213 and 217. The authority of State government lessors to inspect and regulate operations of their lands is not properly part of this rulemaking because the Bureau of Land Management’s authority is limited to Federal and Indian lands, except as authorized by a unit or community agreement. Indian tribes are free to conduct whatever investigations and inspections they deem necessary on their lands and in accordance with their own separate authority. However, Title II of the Federal Oil and Gas Royalty Management Act and the regulations in 43 CFR Part 3160 only apply to cooperative agreements with Indian tribes to perform those inspections and investigations for which the Bureau of Land Management is responsible.

The following discussion relates to comments that were directed to specific sections of the proposed rulemaking.

**Comments**

**Section 3160.0-5 Definitions.**

One comment suggested that authorized representatives be provided with identification which includes indicia of their authority and, further, that they be obligated to protect any proprietary data obtained during an inspection or investigation under the same responsibility as the Secretary of the Interior. The term “authorized officer” refers to a Bureau of Land Management employee who has been delegated authority to perform the duties set out in the regulations. The term “authorized representative” was added as a definition by the proposed rulemaking to refer to someone other than a Bureau employee who is authorized by the Bureau to conduct certain facets of the Bureau’s duties. Any such authorized representative will be provided an official identification card which will show the extent of his/her authority. Provisions for the protection of proprietary data will be included in all cooperative agreements, delegations to States and contracts in accordance with specific provisions of the Federal Oil and Gas Royalty Management Act. No change has been made in this term in the final rulemaking.

One comment advised that the definition of the term “lease”, when taken in context with the definitions of the terms “lease site” and “lessee”, is broad enough to include private and State lands included in Federal units and suggested that all the definitions be strictly limited so that they apply only to Federal and Indian leases. The final rulemaking does not adopt the suggestion made by the comment and the definitions are unchanged. The principle of utilization, or other pooling, is that operations on any committed lease are deemed to be on for the benefit of any other committed lease. Since all committed leases within a communitized area or unit participating area share in the total production from the communitized tract or participating area regardless of the ownership of the mineral estate where the wells are located, the Bureau of Land Management must have some limited authority to obtain needed data and to inspect non-Federal and non-Indian sites to assure that the Federal and Indian interests are protected. This limited authority is spelled out in the formal agreement, i.e., unit, communitization or gas storage. If the agreement fails to provide such limited authority to the Bureau or if the United States merely accepts the agreement rather than formally approving it, usually in the case of nominal Federal or Indian interest ownership therein, these regulations do not apply to operations on private or State lands.

Two comments advised that the definition of the term “lessee” is troublesome. One comment suggested that designated operators be included in the definition of lessees. The other comment suggested that the definition does not precisely track the definition in the Federal Oil and Gas Royalty Management Act, but stated that the major concern with the definition is that notices of penalty should also be sent to the actual lessee if the operator is someone other than the lessee. The term is difficult to define, especially in light of the varying interpretations of the terms “lessee” and “operator” in common usage in various segments of government and industry. While the final rulemaking does not make and change in the definition of the term, there is no intent either to broaden or to restrict the legal definition of the terms “lessee” or “operator”, or to define the ultimate responsibilities of the entities involved in lease ownership. It is important to keep in mind that the regulations in part 3160 apply to operations on or for the benefit of Federal and Indian oil and gas leases and are focused on setting standards for those actually conducting those operations. Therefore, as a convenience, the term “lessee” is used in these regulations to include both lessors and operators. In actual practice, the Bureau of Land Management initially will look to the person actually conducting the operations on the lease to correct any
violations found or to pay any penalties imposed. If someone other than the lessee is the operator of the lease, copies of the notice of penalty issued to the operator will be mailed to the lessee.

Section 3161.3 Inspection.

One comment suggested that the final rulemaking amend this section by inserting the phrase "or capable of producing" between the words "producing" and the words "or is expected to produce" in the first sentence to clarify that high capacity shut-in leases will receive at least an annual inspection also. This recommended change, while having some merit, was not adopted by the final rulemaking because the language of the proposed rulemaking was taken directly from the Federal Oil and Gas Royalty Management Act.

Several comments on this section suggested that the priorities of inspections on leases be determined only after individual needs were considered. One suggestion was that the State and Indian tribes negotiate the needs for specific inspections receive the highest priority. Another comment suggested that all producing Indian leases should be inspected a number of times each year even though it was acknowledged that the Bureau of Land Management does not have a sufficient number of inspectors to inspect all leases, both Federal and Indian, several times each year. One comment advised that the Federal Oil and Gas Royalty Management Act requires the Director of the Bureau of Land Management, to develop guidelines setting forth the coverage and frequency of inspections, but that this aspect was not addressed in the proposed rulemaking. The comment requested that the guidelines be developed and published in the Federal Register for public comment. In addition to other comments on the term "inspections", several of the comments requested that the term "significant quantities", used in the term "inspections", be added to the definitions in the final rulemaking and used as the basis for at least annual inspections. The general theme of all of these comments is that inspection frequency and coverage be spelled out in the final rulemaking. These suggestions have not been adopted by the final rulemaking. The regulations in part 3160 only establish minimum standards as to what is to be accomplished. How the standard is to be met is more properly included in manual, instruction memoranda, or other internal guidelines. The Bureau has a manual chapter in effect which establishes guidelines concerning what is to be inspected on producing leases. In addition, each Bureau District office prepares an annual inspection plan based on the Bureau's Inspection and Enforcement Strategy, which sets forth the frequency of inspection for leases in that District. The inspection frequency is based on several criteria, such as: (1) significant production; (2) history of non-compliance; (3) amount of available work force and funding; and (4) a set aside of time and resources to accommodate requests for specific inspections received from the Minerals Management Service, the States, and Indian tribes. The Bureau believes that this system is superior to formalizing the procedures in regulations and that it satisfies the requirements of the Federal Oil and Gas Royalty Management Act.

One comment suggested that standard terms and funding provisions pertaining to cooperative agreements and delegations for inspection authority be added by the final rulemaking. This suggestion was not adopted by the final rulemaking. There are oil and gas operations on Federal lands in 22 different States. In order to accommodate the differing requirements of the many involved States, the regulations are kept as simple as possible, i.e., merely providing the authority to enter into such arrangements in accordance with the Federal Oil and Gas Royalty Management Act, leaving funding, delegation terms and cooperative agreement terms open, constrained only by the specific provisions of the Act applicable therein.

Several comments expressed concern that inspector qualifications were not part of the proposed rulemaking, nor were they included in the existing regulations in Part 3160. These comments recommended various experience levels, industry training courses that should be taken and demonstration of judgmental capacity that should be included in the final rulemaking as qualification standards for inspectors. These recommendations have not been adopted by the final rulemaking. The Bureau of Land Management acknowledges that an individual does not naturally possess the knowledge needed to be an effective inspector in this program. However, the majority of the inspectors now in the Bureau's District offices were employed by the Geological Survey and the Minerals Management Service. Further, the Bureau has continued Survey/Service training programs and is in the process of developing more extensive training courses, some of which use industry experts as instructors. This training will be available to any State or Indian inspector as the need arises as a result of cooperative agreements or delegations of authority being completed. Position qualification standards for employment as an inspector are on record as are the standards for promotion of inspectors. These documents and procedures are much too detailed and involved to be included in these operating regulations whose main focus is on standards to be applied to oilfield operations. Further, personnel standards and hiring procedures, which are subject to constant change, do not properly belong in regulations.

Several comments suggested that the term "cooperative agreement site" in the first sentence of § 3161.3(a) of the proposed rulemaking is misleading and confusing due to the use of the term cooperative agreements in the context of inspection functions. This suggestion has been adopted and the final rulemaking deletes this phrase. In addition, the section has been clarified by adding at the end of paragraph (a) the language which describes the sites to be inspected.

One comment suggested deleting the figure "1" from the phrase "significant quantities of oil or gas in any 1 year" as it appears in paragraph (a). The final rulemaking adopts this suggestion and deletes the figure "1".

One comment questioned whether the Bureau of Indian Affairs is involved in this section and in other sections of this proposed rulemaking. They suggested this be clarified by including the Bureau of Indian Affairs authorities in this area. The final rulemaking has not adopted this suggestion because Secretarial Order No. 8983 delegates the responsibility for activities covered by part 3160 to the Bureau of Land Management for both Federal and Indian leases. In addition, § 3160.0-3 contains reference to the statutory authority for operations on both tribal and allotted lands.

Section 3162.1 General requirements.

Several comments advised that the requirement to permit inspections of lease sites and records normally kept on those sites is an onerous burden unless limited to normal business hours since it would require operators to maintain supervisory personnel at the lease sites 24 hours a day. While agreeing with the principle raised by the comments, the final rulemaking does not limit the inspection period for all inspections to "normal" business hours. To do so would preclude inspections at other times and also would require prescribing...
what is meant by the term "normal business hours." However, routine inspections of records will generally be conducted during normal business hours. Therefore, a sentence has been added to the final rulemaking that provides that "[i]nspections involving record examination shall normally be conducted during those hours when responsible persons are expected to be present at the facility being inspected." Drilling and completion operations usually operate 24 hours a day until finished. Truck and pipeline transporters may operate 24 hours a day. In addition, emergency or other investigation processes may require an inspector's presence at a lease site outside of normal business hours.

Several comments suggested that immediate access to leases and records is inconvenient, unsafe for the inspector, causes problems with landowners when other than Federal or Indian Surface is involved and creates litigious situations concerning damage to company property, or injury to the inspectors, particularly considering that non-Bureau of Land Management employees may be making inspections. The comments recommended that at least a 24-hour notice be given prior to an inspection. The final rulemaking does not accept these recommendations and the provisions for immediate access to the lease sites and records for inspection purposes remain part of the final rulemaking. The language of the final rulemaking follows the language of the Federal Oil and Gas Royalty Management Act. While the recommended 24-hour notification might be in order, routine, detailed production lease inspections, it is simply not practical to require such notice as a condition precedent to all inspections considering the various types of inspections conducted i.e., non-detailed fly-over or drive-through, rehabilitation of abandoned sites, drilling mud, workover, meter proving, oil and water spills, accident investigations, transporter documentation, and abandonment operations. It is beyond the scope of the regulations in part 3100 to discuss tort liabilities incident to inspection procedures or to attempt to resolve difficulties with surface landowners and, further, it is questionable whether a day's prior notice would actually resolve either of the perceived problems.

One comment advised that a penalty of $10,000 per day for violation of § 3162.1(b) seems excessive. No change has been made in the final rulemaking as a result of this comment since the Federal Oil and Gas Royalty Management Act prescribes a penalty of up to $10,000 per day for such violations. However, neither the Act nor the regulations require the maximum penalty to be assessed in each case.

One comment argues that § 3162.1(b) expands the Bureau of Land Management's right to inspect lease sites to include "records normally kept on the lease" by citing section 103(a) of the Federal Oil and Gas Royalty Management Act which provides that the Secretary of the Interior must formally request record examination in conjunction with an audit or investigation and recommends the deletion of the language by the final rulemaking. The final rulemaking does not adopt the recommendation. The Department of the Interior interprets the first sentence of section 103(a) of the Act as requiring the establishment and maintenance of reasonable records by regulation and the second sentence of that section permits examination of those records immediately upon request of a duly authorized inspector.

**Section 3162.4-1** Well records and reports.

One comment recommended that the copies of logs required by § 3162.4-1(a) be subject to restrictions pertaining to protection of proprietary data. No change is needed in this section to protect these data because they are already protected by § 3162.8. Several comments suggested alternatives to reporting by the 5th business day new or resumed production other than that required by § 3162.4-1(b). The Federal Oil and Gas Royalty Management Act is explicit in this regard and the only question open to discussion is how this reporting is to be accomplished. The recommendations made in the comments are addressed as follows: the requirement for reporting by the fifth day applies to wells located on private and State lands which are subject to federally approved unit or communitization agreements under which Federal or Indian leases share production. The rulemaking does not limit the reporting requirement only to Federal and Indian lease wells as requested in the comment because section 102(b)(3) of the Act clearly states "begins production on a lease site or allocated to a lease site." The Well Completion Report and Log Form does not provide the needed information, as it reports only that the well has been completed or recompleted for production and not necessarily that it has commenced production. A letter postmarked not later than the 5th business day after production begins will not satisfy the reporting requirement, as the receipt of the data by the Bureau of Land Management would necessarily occur sometime after said 5th business day. The 30-day reporting requirement for monthly reports which appeared in the former 30 CFR Part 221, which now appears at 43 CFR § 3162.4-3, does not satisfy the specific reporting requirements of section 102(b)(3) of the Act. The Act specifies that the requirement for reporting by the fifth day is supplemental to and not in lieu of the monthly reporting requirement. The reporting requirement for wells idle more than 30 days is specific in the Act with regard to both new and recompleted wells. The level of violation for knowingly or willfully failing to report new or resumed production is specific in section 109(c)(3) of the Act and, therefore, seems to have been considered very important by the Congress. Thus, the Bureau is reluctant to classify an unintentional violation in this regard as minor. The need for definition of the term "begins production" was consistent in most of the comments. The comments suggested the insertion of words such as "commercial," or "into facilities for which sales can be conducted," or "into permanent facilities." These would not adequately describe what "begins production" means. The final rulemaking does insert the phrase "on which royalty is due" between the words "production" and "anywhere on a lease site" to more properly describe which production must be reported by the 5th business day after "production begins or is resumed."

Consistent comments concerning the language of § 3162.4-1(d) of the proposed rulemaking were to the effect the Bureau of Land Management action is an unjustified, unreasonable and unauthorized extension of the records retention provision of section 103(b) of the Federal Oil and Gas Royalty Management Act. The records retention provisions appear in two sections of the regulations, § 3162.4-1 for well records and reports and § 3162.7-1 for disposition of production. Experience has shown that most lessees routinely maintain records covering the complete history of any well drilled and the production equipment used on the lease for so long as the lessee owns the lease and/or it is producing. This would usually be for the life of the lease since information, including data on dryholes or failures, is essential to continued ownership and operation of the lease.
These are the data that it was anticipated lessees would keep when the records retention provision was added to § 3162.4-1 and the requirement for their retention is authorized by other sources in addition to the Act. In reviewing § 3162.4-1(a), it is noted that "disposition of leasehold products" was included in duplication of § 3162.7-1 so the final rulemaking removes those words from § 3162.4-1(a). However, in response to the comments advising that the provisions for retention of reports were inconsistent, the final rulemaking does modify § 3162.4-1(d) to only require retention for 6 years from the date the records are generated.

While it is believed that good business practice in the operation of Federal and Indian leases will dictate retention of such well records for a longer period, this will no longer be a requirement of the regulations.

Section 3162.7-1 Disposition of production.

Two comments requested that the definition of the term "appropriate law enforcement officer" as used in § 3162.7-1(c) be expanded in the final rulemaking to include tribal law enforcement officers when operation is on Indian lands. The final rulemaking does not make the requested change. It is beyond the purview of these oil and gas operating regulations to attempt to expand, limit or otherwise delineate the jurisdictional authority of any law enforcement officer. The term "appropriate law enforcement officer," as used in this section, would include tribal law enforcement officers on Indian lands. However, the language is permissive, i.e., those officers may use the regulation as authority, in addition to other authority, but they are not obligated to do so. In addition, the language of the rulemaking is taken directly from the Act.

One comment advised that application of § 3162.7-1(d) must be limited to those leases issued after the effective date of the Federal Oil and Gas Royalty Management Act. The final rulemaking did not adopt this recommended change because section 305 of the Act clearly provides that the provisions of the Act aply to leases issued before, on or after the date of its enactment unless it would result in an alteration of express and specific provisions of a lease issued prior to the effective date of the Act.

Several comments advised that the term "intended first destination" of oil or gas, particularly when transported by pipeline, is very difficult to comply with. The point raised in the comment is well taken. The phrase is derived from sections 102(c)(1) and (c)(2) of the Federal Oil and Gas Royalty Management Act, but when taken in context with section 103(a), it is apparent that the provision is directed toward data concerning the first purchaser rather than the actual geographic destination. Therefore, the phrase "intended first destination" in the proposed rulemaking has been replaced in the final rulemaking by the phrase "intended first purchaser."

One comment requested that the term "person engaged in transportation of oil or gas" be clarified to indicate whether the transporter or the consignor is the party referred to in the definition. The final rulemaking does not further define this term. In many cases, the consignee, the transporter and the consignor are one and the same corporate entity. In other cases, they are closely related even though separate corporate entities. In still other cases, there are genuine arms-length relationships between some or all of the parties. Finally, in the case of contract truckers, there is no relationship to either the consignee or consignor, except for the contractual obligation. Therefore, both the Federal Oil and Gas Royalty Management Act and this rulemaking are aimed at whatever entity is actually engaged in moving the oil or gas, regardless of whether his/her status is that of a producer, purchaser or merely transporter, or any combination thereof.

One comment suggested dividing paragraph (c) into more readily identifiable and competent segments. The final rulemaking has adopted this suggestion, with the paragraph being divided according to requirements of the Federal Register.

Section 3162.8 Confidentiality.

Several comments requested inclusion of the word "audit" with the word "investigation" and discussed the semantics of the two words to show either that they are related in meaning or, alternately, that they are unrelated in meaning. Comments pointed out that section 202 of the Federal Oil and Gas Royalty Management Act uses the words "inspection," "auditing," "investigation" or "enforcement" together. The final rulemaking has not adopted this suggestion. This final rulemaking applies only to matters within the jurisdiction of the Bureau of Land Management. Secretarial Order No. 3007, as amended, delegates the authority for audits solely to the Minerals Management Service. The Bureau, of course, will remain available to the Service as a cooperative in any audit activity in a consultative capacity when needed and requested by the Service. The Bureau considers inspection to be an integral part of any investigation.

One comment discussed the two consecutive 12-month periods of confidentiality in § 3162.8(a) of the existing regulations and seemed to be requesting a revision of that section. The proposed rulemaking did not address § 3162.8(a) and it would be inappropriate to make any substantive revision of that section in this final rulemaking. The final rulemaking does not amend § 3162.8(a).

Several comments expressed concern that the proposed rulemaking would bar Indian tribes from receiving data they need unless they waive their sovereign immunity. Operators expressed concern that confidential data they have provided be protected to the same degree that it has been afforded in the past by Department of the Interior employees. The operators insist that any entity, such as an Indian tribe or Indian allottees, and particularly individuals associated with those entities, be accountable for unauthorized disclosure or misuse of the confidential data. Title II of the Federal Oil and Gas Royalty Management Act relates to cooperative agreements with States and Indian tribes and delegation of authority to the States. Section 203 pertains to information provided under Title II. Within the various divisions of State governments, the States receive the same sensitive data as that received by the Department, though it may not be as concentrated as it is in the files of the Department. The Department has maintained a long-standing policy that Indian tribes and Indian allottees may have access to any data in Departmental files that pertain to their leases. Section 3162.8(e) of the existing regulations applies only to that data specifically requested for an investigation and does not affect that traditional relationship.

Sections 3162.8(e), (f) and (g), as amended by the proposed and final rulemakings, repeal the Federal Oil and Gas Royalty Management Act verbatim as to its application to oil and gas operations. Section 3162.8(e) of the final rulemaking supplements, rather than derogates, the Indian lessee's customary right to data affecting Indian leases. Sections 3162.8(f) and (g) firmly place responsibility for unauthorized disclosure or misuse of confidential data on all entities, including any individuals conducting investigations, at least equal to that of the United States, its Departments and agencies and its employees. Reference to "this Act" in the last sentence of § 3162.8(g) without
firm antecedent in the operating regulations is confusing. The final rulemaking clarifies this sentence by replacing the phrase "this Act" with the phrase "Title II of the Federal Oil and Gas Royalty Management Act."

Section 3163.3 Assessments for noncompliance.

Two comments suggested that certain of the assessments provided for in this section of the existing regulations are de facto penalties and should either be removed by the final rulemaking or applied under the procedures prescribed by section 109 of the Federal Oil and Gas Royalty Management Act and § 3163.3 of the existing regulations. The final rulemaking does not adopt either of these suggested changes because such assessments do not constitute penalties. While these assessments may appear to be penalties, they are merely compensation to the United States for damages to resources or existing improvements and the added administrative cost to the United States caused by reasons of a lessee's failure to comply with the regulations in this part and the resultant need for regulatory action to obtain a correction of the deficiency. Since the penalty provisions in both the proposed and final rulemakings are imposed for the continued disregard of orders to correct, there is no longer a need to continue assessments during such noncompliance and, therefore, the final rulemaking modifies § 3163.3 to indicate that any assessment for a violation will be a one-time charge.

Section 3163.4-1 Administrative penalties.

This section of the proposed rulemaking drew, by far, the greatest number of comments. All of the respondents, except the four Indian tribes, provided lengthy comments. Many of the comments, including those from oil and gas companies and their associates, seemed contradictory in that they criticized the proposed rulemaking for its length and complexity, while at the same time requested more detail or definitions. The following discussion is in response to the points raised in the comments.

The most consistent thread in the comments was to the effect that the Mineral Leasing Act penalties set forth in § 3163.4-1(a) are duplicated by the Federal Oil and Gas Royalty Management Act, in § 3163.4-1(b), causing "unconstitutional double jeopardy" for the same violation. The comments requested that the final rulemaking remove § 3163.4-1(a) in its entirety. The penalty system included under both § 3163.4-1(a) and (b) (1) and (2) of the proposed rulemaking was designated to penalize failure to correct violations and not to penalize the violations themselves. If violations are corrected within the time allowed for such corrections under these sections, then no penalty is assessed. Many of the comments advised that the proposed rulemaking is an unauthorized and illegal expansion of both the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Act. Many of those same comments requested, in the event that both § 3163.4-1(a) and (b) are retained by the final rulemaking, that the phrase "[N]ormally, a penalty would only be assessed for violations involving serious threats to health, safety, property or the environment, or for continuous disregard of orders" appearing in the existing § 3163.4 be reinstated in § 3163.4-1(a) by the final rulemaking or, more explicitly, that § 3163.4-1(a) be limited to forfeiture, cancellation or reimbursement provisions expressly part of the Mineral Leasing Act. Sections 188, 189, 352 and 359 of Title 30 of the United States Code provide the Secretary of the Interior's authority to promulgate the penalties provided in § 3163.4-1(a) of this final rulemaking. The Federal Oil and Gas Royalty Management Act (30 U.S.C. 1753(a)] specifically provided that the new penalties provided in the Act were in addition to existing penalties. While the final rulemaking does not adopt any of these suggestions, several changes have been made in order to provide a more unified system of penalties for continued noncompliance. Procedural requirements set forth in § 3163.4-1(b) of the proposed rulemaking and mandated by the Federal Oil and Gas Royalty Management Act were not repeated under § 3163.4-1(a) of the final rulemaking, as requested by several comments, because such procedural requirements are not mandated by the Mineral Leasing Act as they are in the Federal Oil and Gas Royalty Management Act. The maximum amount of a penalty under § 3163.4-1(a) is modified by the final rulemaking from $1,000 to $500 per day for consistency between the two authorities. In addition, the language of § 3163.4-1(a)(2) of the proposed rulemaking has been revised by the final rulemaking to be consistent with that of § 3163.4-1(b) of the final rulemaking and the original intent. The phrase "may subject the lessee to a penalty" as it appeared in the proposed rulemaking was misleading since the use of the appropriate tables to determine whether a penalty is to be assessed and its amount is mandatory, not a discretionary action.

Several comments requested that the open-ended beginning time for compliance under § 3163.4-1 of the proposed rulemaking be conformed to the 20-day or longer time frame appearing in § 3163.4-1(f) of the proposed rulemaking. These suggestions have not been adopted by the final rulemaking because there are a number of violations that must not be permitted to continue for 20 days, such as pollution and safety related violations, before corrective action is taken. When such occurrences are detected, the Secretary must have the means to compel corrective action immediately. However, to the extent that Congress provided specific penalty authority in section 109 of the Federal Oil and Gas Royalty Management Act, the Secretary no longer needs to rely on the authority of then current mineral leasing laws. Therefore, the final rulemaking has been modified to make it clear that § 3163.4-1(a) penalties only will be used in cases where a violation requires corrective action in less than 20 days and there is a failure to do so within the time allowed. In addition, when such penalties are imposed, they will run through the 20th day of noncompliance when, if not corrected, a penalty under § 3163.4-1(b) will be instituted and will be effective from the date of the original notice. This will eliminate the appearance of double penalties for the same act or failure to correct a deficiency while providing continued authority to require prompt compliance when it is necessary.

One comment suggested that the phrase "or his/her representative" be removed from § 3163.4-1(a) as there is a question as to whether or not an "authorized representative" as defined in this part will have authority to issue orders to a lessee. The final rulemaking has adopted this suggestion and has deleted the language.

As previously stated, all administrative penalties now provide for a maximum amount as well as specific reference to additional actions which are to be instituted should the maximum be reached without the required abatement action.

Several comments advised that the complexity and inflexibility of § 3163.4-1(e) of the proposed rulemaking, redesignated § 3163.4-1(f) by the final rulemaking, will make it difficult to apply and suggested that the methodology of penalty assessment more properly belongs in Bureau of Land Management internal guidance or, if it remains in the regulation, that it should be clearly labeled as guidance rather
than as the established standard. Several comments suggested that the penalty provisions of section 129 of the Federal Oil and Gas Royalty Management Act are sufficiently detailed to stand by themselves, if recast in the form of regulations, and there is no need to amplify thereon as was done in the proposed rulemaking. On the other hand, several comments advised that the list of common violations compiled by the Director, Bureau of Land Management, should not be effective until published in the Federal Register for public comment and thus, by implication, be made a part of the regulations. The final rulemaking retains the basic penalty determination section of § 3163.4-1(e) of the proposed rulemaking, except that subparagraph (s) and proposed Table A are no longer needed since the §1,000 per day penalties have been eliminated by the final rulemaking. This necessitated redesignating all remaining penalty provisions and redesignating § 3163.4-1(e) of the final rulemaking. The first column of Penalty Conversion Table A in the final rulemaking, Table B in the proposed rulemaking, will now be used for penalties under both §§ 3163.4-1(a) and (b).

If the level of penalties for failure to correct violations and method of calculating the levels is clearly stated in regulations, everyone involved will be better able to determine whether or not failure to correct a particular action is subject to penalty and whether the level of a penalty is appropriate. This should result in consistent, nationwide application. Further, the provisions of §§ 3483.4-1(d) and (e) of the final rulemaking are very similar to the existing regulations of the Mine Safety and Health Administration in 30 CFR Part 100 and of the Office of Surface Mining in 30 CFR Part 845 for other mineral operations. Thus, nationwide consistency among mineral commodity operations with respect to penalties is promoted.

Several comments objected to the inclusion of the "history of previous violations" provision appearing in § 3163.4-1(e)(4) of the proposed rulemaking and requested clarification or definition of the phrase "operator-by-operator" and "lease-by-lease." One comment advised that the Federal Oil and Gas Royalty Management Act does not authorize creation of a history file. One comment questioned which violations should be counted in such histories, i.e., any Incident of Noncompliance issued, or only those for which a penalty had been paid, and further, if any entry might be expunged from the history when corrections have been made. Several comments suggested that if a history is to be compiled, a 36-month revolving history is too long and that it should not include more than 12 months. Another issue raised by these comments was that the February 1, 1983, commencement date is inappropriate, and that the starting date for the history should not be any earlier than the effective date of this final rulemaking.

Finally, one comment advised that it is a point of law that any violation or failure to correct a violation must be adjudicated strictly upon the circumstances applicable to the individual case and that no other action, or inaction, of the person charged may affect that adjudication unless specifically related to the individual infraction at hand. The final rulemaking has not changed the language of § 3163.4-1(e)(4) of the proposed rulemaking. The history of violation concept is referred to in section 101(b)(1) of the Act which outlines the duties of the Secretary of the Interior. It is agreed that it is pertinent to consider only the circumstances at hand in an individual matter to determine whether or not a specific failure to correct a violation has occurred and that other actions or inactions of the person charged with the violation should have no bearing upon that determination. However, it is equally appropriate, once a determination is made that failure to correct a violation has occurred, to include the past history of the person charged in calculating the level of penalty to be applied. Inasmuch as the Act requires only annual inspection, a 12-month revolving period for history of violations would have no meaning, and a 3-inspection cycle is reasonable. The effective date of February 1, 1983, is also reasonable as it is the first day of the month following the enactment of the Federal Oil and Gas Royalty Management Act. The lack of regulations in an intervening period should not derogate the Act's provisions. Finally, the final rulemaking did not change the phrases "lease-by-lease" as was suggested by a few of the comments, but did replace the phrase "operator-by-operator" with the phrase "lessee-by-lessee" for consistency. The widest geographical boundary for accumulation of a history of violations is the lease and if there is more than one operator on that lease, the actions of one will have no bearing on the history of any of the others. In the case of transporters, there is no direct connection with any lease or lease boundary so the geographical boundary chosen was that of the various districts of the Bureau of Land Management.

Several comments made the observation that the Federal Oil and Gas Royalty Management Act requires that notices of proposed penalties be sent by registered mail rather than by certified mail as prescribed in the proposed rulemaking. Several comments also suggested that the final rulemaking should prescribe that any such notice also be sent to the lessee of record, if different from the operator. The term "certified mail" remains in the final rulemaking because the term "registered mail" as used in the Act has been interpreted to mean U.S. Postal Service mail service "Registered Mail, Return Receipt Requested" or "Certified Mail, Return Receipt Requested."

The final rulemaking did not change this section to require that any violation notices be sent to the lessee, if other than the operator, because other sections of the existing regulation require service upon the lessee of record.

One comment requested that the phrase "or by contract or by Secretarially approved tribal ordinance" be added to § 3163.4-1(b)(10) of the proposed rulemaking, designated § 3163.4-1(b)(10) in the final rulemaking, and the phrase "or other payment instrument" be added to the phrase "royalty income" where it appears in § 3163.4-1(d)(1), (2) and (3) of the proposed rulemaking. The final rulemaking did adopt another recommended change to § 3163.4-1(b)(9) of the proposed rulemaking, redesignated § 3163.4-1(b)(10) by the final rulemaking, which will accommodate tribal ordinances, but did not make the "contact" or "other payment" changes that were requested. The final rulemaking reflects only the Bureau of Land Management authorities and responsibilities as they relate to operations per Secretarial Order No. 9007, as amended.

Contract provisions negotiated by Indian tribes under the Indian Mineral Development Act of 1982 are more properly the subject matter of Title 25 of the Code of Federal Regulations and revenue collection is the responsibility of the Minerals Management Service. Several comments suggested technical or clarification revisions not of a policy or substantive nature. Those suggestions are discussed individually as follows.

In § 3163.4-1(b)(2), the phrase "paragraph (1) of this paragraph" is confusing. The final rulemaking makes only a minor change in this paragraph for clarification because the phrase "corrective action is not taken" as used in section 109(h) of the Federal Oil and
Gas Royalty Management Act has been interpreted to mean corrective action not completed. One comment suggested that the phrase "knowingly and willfully" more properly reflects the intent of Congress that does the phrase "knowingly or willfully" appearing in the Act and in § 3163.4-1(b)(4) and (b)(5) of the proposed rulemaking. The final rulemaking does not adopt the suggested change because the language of the proposed rulemaking follows the language of the Act which is clear. Another comment suggested that the word "compromise" in § 3163.4-1(b)(7) of the proposed rulemaking, redesignated § 3163.4-1(b)(8) by the final rulemaking, be changed to "remit" as specified in section 109(j) of the Act. The final rulemaking does not make the suggested change because the phrase "compromise or reduce" used in section 109(g) of the Act seems overriding. One comment pointed out that the last sentence of § 3163.4-1(b)(7) of the proposed rulemaking seems out of context. After careful review of § 3163.4-1(b)(7) of the proposed rulemaking, the final rulemaking has added the final sentence of § 3163.4-1(b)(7) of the proposed rulemaking to § 3163.5(c). One comment suggested that the term "in this title" appearing in § 3163.4-1(b)(8) of the proposed rulemaking is much too narrow in scope and more properly should read "in any other provision of law." This suggested change has been adopted by the final rulemaking but redesignated the section as § 3163.4-1(b)(10). Finally, one comment pointed out an error in Penalty Conversion Table-A in § 3163.4-1(e)(5)(i) of the proposed rulemaking. However, as previously stated, this table has been eliminated. Section 3163.5 Assessments and administrative penalties.

Two comments suggested that § 3163.5(a) of the proposed rulemaking be removed and § 3163.5(b) be renumbered as paragraph (a) since the comments had earlier suggested the removal of § 3163.3. The final rulemaking did not adopt the suggested changes since the final rulemaking did retain § 3163.3 for reasons previously discussed in this preamble. 


The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does 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.).

Even though the final rulemaking establishes new and substantial penalties for violations of law, regulations, lease terms or directives, the cost or economic effect will be minimal or non-existent so long as lessees and operators comply with the existing requirements or take corrective action in a timely manner. Cooperative agreements with the States or Indian tribes, delegations of authority to the States or contractor performed inspections will have no economic effect or cost to industry as this final rulemaking only addresses who may be authorized to conduct various regulatory activities.

The final rulemaking imposes no additional recordkeeping or reporting requirements requiring additional clearance by the Office of Management and Budget. The change made to § 3163.4-1(d) by the final rulemaking will reduce existing requirements for retention of well records. The information collection requirements have also been approved by the Office of Management and Budget and assigned clearance numbers 1004-0134, 1004-0135, 1004-0136, 1004-0137 and 1004-0138.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) and Executive Order 12291 (46 FR 13193), Part 3160, Chapter 2, Chapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

Garry E. Carruthers
Acting Secretary of the Interior.

PART 3160—ONSHORE OIL AND GAS OPERATIONS


§ 3160.0-5 [Amended]
2. Section 3160.0-5 is amended by:
A. Adding the term Authorized Representative to read:
   Authorized Representative. Any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation, or contract.
B. Adding the term Federal Lands to read:
   Federal Lands. All lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral leases reserved to the United States in the conveyance of a surface or nonmineral estate.
C. Revising the term Lease to read:
   Lease. Any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas.
D. Removing the term Leased Lands, Leasehold;
E. Adding the term Lease Site to read:
   Lease Site. Any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized pursuant to a lease.
F. Revising the term Lessee to read:
   Lessee. The party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference throughout this part, the term lessee also refers to and includes the owners of approved operating rights and designated operators.
G. Adding the term Person to read:
   Person. Any individual, firm, corporation, association, partnership, consortium or joint venture.
H. Adding a new § 3161.3 is added to read:

§ 3161.3 Inspections.
(a) The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States
or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

(b) In accomplishing the inspections, the authorized officer may utilize Bureau employees, or enter cooperative agreements with States of Indian Tribes, may delegate the inspection authority to any State, or may contract with non-Federal Governmental entities. Any cooperative agreement, delegation, or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.1 [Amended]
4. Section 3162.1 is amended by designating the existing paragraph as paragraph (a) and adding new paragraph (b) and (c) to read:

(b) The lessee shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation or otherwise.

§ 3162.4-1 [Amended]
5. Section 3162.4-1 is amended by:

A. Amending paragraph (a) by removing the phrase "disposition of leasehold products" from the first sentence.

B. Revising paragraph (c) to read:

(c) Not later than the 5th business day after any well begins production or begins to produce in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

C. Adding a new paragraph (d) to read:

(d) All records and reports required by this section shall be maintained for 6 years from the date they were generated. In addition, if the Secretary, or his designee notifies the recordkeeper that the Department of the Interior has initiated or is participating in an audit or investigation involving such records, the records shall shall be maintained until the Secretary, or his designee, releases the recordholder from the obligation to maintain such records.

§ 3162.7-1 [Amended]
6. Section 3162.7-1 is amended by:

A. Revising paragraphs (c) and (d) to read:

(c) (1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum, the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas.

(3) On any lease site, any authorized representative who is properly identified and who possesses proper documentation for the load of oil, may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) Any authorized representative who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

§ 3162.7-2 [Amended]
7. Section 3162.7-2 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

§ 3162.7-3 [Amended]
8. Section 3162.7-3 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

9. Section 3162.8 is amended by adding new paragraphs (e), (f) and (g) to read:

(e) Trade secrets, proprietary and other confidential information obtained pursuant to this part shall be made available to States and Indian Tribes upon their request for the purpose of conducting an investigation if:

(1) such State or Indian Tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an investigation.

(2) such State or Indian Tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an investigation or to litigating; and

(4) in the case of an Indian Tribe, such Tribe demonstrates that such information is essential to the conduct of an investigation and waives sovereign immunity by express consent for wrongful disclosure by such Tribe.

(f) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian Tribe of any information provided to such individual, State, or Indian Tribe pursuant to any cooperative agreement or a delegation.

(g) Whenever any individual, State or Indian Tribe has obtained possession of information pursuant to a cooperative agreement or any individual or State has obtained possession of information pursuant to a delegation of authority, the individual shall be subject to the same provisions of law with respect to the
disclosure of such information as would apply to an officer or employee of the United States or of any Department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any Department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information or other confidential information under Title II of the Federal Oil and Gas Royalty Management Act may be required to disclose such information under State Law.

§ 3163.3 [Amended]
10. Section 3163.3 is amended by amending paragraph (e) by removing the last sentence of the introductory paragraph and by inserting immediately prior to the figure "$100" the phrase "or a production facility.

§ 3163.4 [Amended]
11. Section 3163.4 is amended by removing all after the title and by adding new section 3163.4–1 and 3163.4–2 to read:

§ 3163.4–1 Administrative penalties.
(a) Mineral Leasing Act (1) Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, the authorized officer shall give the lessee notice in writing to remedy any defaults or violations.
(2) If there is a failure to complete the necessary remedial action within the time and in the manner prescribed by the notice, the lessee shall be liable for a penalty of not more than $500 per day for each day the violation continues beyond the date specified in the notice through the 20th day of such noncompliance.
(3) A penalty shall be imposed under paragraph (a) of this section for the failure to abate violations which are required to be corrected in less than 20 days from the date of the report or notice.
(4) A notice of proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice on their behalf. Any person authorized by the lessee to submit reports, notices, affidavits, records, or other information required by regulations in this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation pertaining to that lease has been filed, the notice shall be served as previously described. A person charged with a violation and served with a notice of civil penalty under this paragraph may request a technical and procedural review under § 3163.5 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either file an appeal pursuant to part 4 of this title or pay the civil penalty.


(b) Federal Oil and Gas Royalty Management Act (1) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the lessee or the notice as previously issued under paragraph (a) of this section. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, not to exceed a maximum of 20 days.


(2) If the violation specified in paragraph (b)(1) of this paragraph is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(3) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(4) Whenever a transporter fails to permit inspection of proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of failure to permit inspection and continuing until the proper documentation is provided.

(5) Any person who:
(i) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or
(ii) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, form 3160–5, or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed; shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(6) Any person who:
(i) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other information required by this part; or
(ii) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or
(iii) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site; shall be liable for a civil penalty of up to $100,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(7)(i) Notice of violation imposed by the authorized officer under this section shall be by personal service or by certified mail. Any person may designate a representative to receive any notice of their behalf. Any person who is authorized by the lessee to submit reports, notices, affidavits, records data or other information required by this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation has been filed, the notice shall be served as previously described.
(ii) A person charged with a violation and served with a notice of civil penalty may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed.

Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either request a hearing on the record or pay the civil penalty. A request for a hearing shall be filed within the time allowed in the office of the State Director having jurisdiction of the lands covered by the lease. No penalty shall be assessed under this section until the person charged with the violation has been given the opportunity for a hearing on the record under Part 4 of this title.

(8) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under paragraph (b) of this section. In compromising or reducing the amount of a civil penalty under paragraph (b) of this section, the Secretary shall state on the record the reasons for his/her determination.

Any person who has requested a hearing in accordance with paragraph (b)(7) of this section and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

Civil penalties provided by this section shall be served with a notice of civil penalty. A request for a hearing shall be filed within the time allowed in the subsection or such other time period as the authorized officer may specify and shall be used to convert the accumulation of penalty points from Tables I and II above to the appropriate dollar per day proposed penalty.

**Table I—Gravity of the Violation:**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Penalty points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor violations</td>
<td>11</td>
</tr>
<tr>
<td>Moderate violations</td>
<td>20</td>
</tr>
<tr>
<td>Major violations</td>
<td>71</td>
</tr>
</tbody>
</table>

**Table II—Lessee's or Transporter's History of Past Violations:**

<table>
<thead>
<tr>
<th>Minor violations</th>
<th>Number x 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate violations</td>
<td>Number x 2</td>
</tr>
<tr>
<td>Major violations</td>
<td>Number x 5</td>
</tr>
<tr>
<td>Total—rounded down to the nearest whole number</td>
<td>(maximum of 25)</td>
</tr>
</tbody>
</table>

History of previous violations standards. History is based on the number of violations issued in a preceding 36-month period beginning February 1, 1983. The history of previous violations may account for a maximum of 29 penalty points. The penalty points shall be calculated on an lessee-by-lessee and lease-by-lease basis and, in the case of transporters, a transporter-by-transporter basis within the jurisdictional area of each Bureau of Land Management District Office.

**(5) Penalty Conversion Table—A (Lessees):**

(i) The following penalty conversion tables are for violations not corrected within the time allowed in paragraph (a) of this section, or by the 20th day under paragraph (b)(1) of this section, or by the 40th day under paragraph (b)(2) of this section or such other time period as the authorized officer may specify and shall be used to convert the accumulation of penalty points from Tables I and II above to the appropriate dollar per day proposed penalty.
(ii) In order to focus particularly on serious violations, while also considering an operator's past b compliance history, no dollar penalty shall be proposed for violations totaling less than 40 penalty points.

(8) Penalty Conversion Table A

<table>
<thead>
<tr>
<th>Points</th>
<th>Not corrected for up to 40 days per day</th>
<th>Not corrected in all other cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>1,710</td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>1,770</td>
<td></td>
</tr>
<tr>
<td>64</td>
<td>1,800</td>
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<td>65</td>
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<td>66</td>
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<td>67</td>
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</tr>
<tr>
<td>100</td>
<td>5,000</td>
<td></td>
</tr>
</tbody>
</table>

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and III to the appropriate per day proposed monetary penalty.

### Table II

<table>
<thead>
<tr>
<th>Points</th>
<th>Penalty dollars per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
<td>3,600</td>
</tr>
<tr>
<td>61</td>
<td>3,720</td>
</tr>
<tr>
<td>62</td>
<td>3,840</td>
</tr>
<tr>
<td>63</td>
<td>3,970</td>
</tr>
<tr>
<td>64</td>
<td>4,100</td>
</tr>
<tr>
<td>65</td>
<td>4,220</td>
</tr>
<tr>
<td>66</td>
<td>4,350</td>
</tr>
<tr>
<td>67</td>
<td>4,490</td>
</tr>
<tr>
<td>68</td>
<td>4,620</td>
</tr>
<tr>
<td>69</td>
<td>4,780</td>
</tr>
<tr>
<td>70</td>
<td>5,040</td>
</tr>
<tr>
<td>71</td>
<td>5,330</td>
</tr>
<tr>
<td>72</td>
<td>5,650</td>
</tr>
<tr>
<td>73</td>
<td>5,990</td>
</tr>
<tr>
<td>74</td>
<td>6,350</td>
</tr>
<tr>
<td>75</td>
<td>6,750</td>
</tr>
<tr>
<td>76</td>
<td>7,180</td>
</tr>
<tr>
<td>77</td>
<td>7,620</td>
</tr>
<tr>
<td>78</td>
<td>8,080</td>
</tr>
<tr>
<td>79</td>
<td>8,560</td>
</tr>
<tr>
<td>80</td>
<td>9,080</td>
</tr>
<tr>
<td>81</td>
<td>9,600</td>
</tr>
<tr>
<td>82</td>
<td>10,150</td>
</tr>
<tr>
<td>83</td>
<td>10,660</td>
</tr>
<tr>
<td>84</td>
<td>11,225</td>
</tr>
<tr>
<td>85</td>
<td>11,830</td>
</tr>
<tr>
<td>86</td>
<td>12,480</td>
</tr>
<tr>
<td>87</td>
<td>13,180</td>
</tr>
<tr>
<td>88</td>
<td>13,925</td>
</tr>
<tr>
<td>89</td>
<td>14,700</td>
</tr>
<tr>
<td>90</td>
<td>15,490</td>
</tr>
<tr>
<td>91</td>
<td>16,310</td>
</tr>
<tr>
<td>92</td>
<td>17,170</td>
</tr>
<tr>
<td>93</td>
<td>18,000</td>
</tr>
<tr>
<td>94</td>
<td>18,880</td>
</tr>
<tr>
<td>95</td>
<td>19,790</td>
</tr>
<tr>
<td>96</td>
<td>20,730</td>
</tr>
<tr>
<td>97</td>
<td>21,690</td>
</tr>
<tr>
<td>98</td>
<td>22,680</td>
</tr>
<tr>
<td>99</td>
<td>23,690</td>
</tr>
<tr>
<td>100</td>
<td>24,650</td>
</tr>
</tbody>
</table>

(6) Penalty Conversion Table B

(i) The amount of the proposed civil penalty for violation of paragraph (b)(6) of this section shall be determined by the formula based on the following criteria: i.e., the specific violation (Table II) and the operator's history of previous violations (Table II).

### Table III

<table>
<thead>
<tr>
<th>Violation</th>
<th>Penalty points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fail to permit inspection upon the</td>
<td>70</td>
</tr>
<tr>
<td>household</td>
<td></td>
</tr>
<tr>
<td>Fails to permit inspection upon</td>
<td>80</td>
</tr>
<tr>
<td>the household</td>
<td></td>
</tr>
<tr>
<td>Knowingly or willfully fails to</td>
<td>85</td>
</tr>
<tr>
<td>notify after well begins or</td>
<td></td>
</tr>
<tr>
<td>resumes production by the 5th</td>
<td></td>
</tr>
<tr>
<td>business day thereafter</td>
<td></td>
</tr>
</tbody>
</table>

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using “Penalty Conversion Table B.”

### Table IV

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Penalty points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases, accepts, sells, transport or conveys to any oil or gas knowing or (i)</td>
<td>70</td>
</tr>
<tr>
<td>having reason to know that such oil or gas was stolen or unlawfully removed or</td>
<td></td>
</tr>
<tr>
<td>diverted.</td>
<td></td>
</tr>
<tr>
<td>Knowingly or willfully prepares, maintains or submits false or misleading</td>
<td>70</td>
</tr>
<tr>
<td>written information.</td>
<td></td>
</tr>
<tr>
<td>Knowingly or willfully prepares, maintains or submits, or keeps false or</td>
<td>70</td>
</tr>
<tr>
<td>misleading written information.</td>
<td></td>
</tr>
<tr>
<td>Knowingly or willfully removes, uses or diverts oil or gas from any lease</td>
<td>70</td>
</tr>
<tr>
<td>without legal authority to do so.</td>
<td></td>
</tr>
<tr>
<td>Violation of section shall be considered a major violation (see Table I).</td>
<td></td>
</tr>
<tr>
<td>and the transporter's history of previous violations (see Table II).</td>
<td></td>
</tr>
<tr>
<td>Penalty points shall be assigned to each criterion and the 2 numbers shall</td>
<td></td>
</tr>
<tr>
<td>then be totaled, and the point accumulation converted to a dollar per day</td>
<td></td>
</tr>
<tr>
<td>amount by using “Penalty Conversion Table B.”</td>
<td></td>
</tr>
</tbody>
</table>

(8) Penalty Conversion Table C

(i) The amount of the proposed civil penalty for violations of paragraph (b)(6) of this section shall be determined by the formula based on the following criteria: i.e., the specific violation (Table IV) and the lessee's history of previous violations (Table II).

### Table V

<table>
<thead>
<tr>
<th>Points</th>
<th>Penalty dollars per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>90</td>
<td>9,000</td>
</tr>
<tr>
<td>91</td>
<td>9,170</td>
</tr>
<tr>
<td>92</td>
<td>9,250</td>
</tr>
<tr>
<td>93</td>
<td>9,350</td>
</tr>
<tr>
<td>94</td>
<td>9,450</td>
</tr>
<tr>
<td>95</td>
<td>9,550</td>
</tr>
<tr>
<td>96</td>
<td>9,650</td>
</tr>
<tr>
<td>97</td>
<td>9,750</td>
</tr>
<tr>
<td>98</td>
<td>9,850</td>
</tr>
<tr>
<td>99</td>
<td>9,950</td>
</tr>
<tr>
<td>100</td>
<td>10,000</td>
</tr>
</tbody>
</table>

§ 3163.4-2 Criminal penalties

Any person who commits an act for which a civil penalty is provided in § 3163.4-1(b)(6) of this title shall, upon conviction, be punished by a fine of not
12. Section 3163.5 is amended by:
A. Revising the title and paragraphs (a) and (b) to read:

§ 3163.5 Assessments and administrative penalties.

(a) Assessments made under § 3163.3 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Administrative penalties under § 3163.4–1 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

B. Adding to the end of paragraph (c) the sentence "The amount of any civil penalty under § 3163.4–1(b) of this title, as finally determined, may be deducted from any sums owing by the United States to the person charged."

13. A new § 3163.6 is added to read as follows:

§ 3163.6 Injunction and specific performance.

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

1. restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or
2. compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

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