

§ 225.36

25 CFR Ch. I (4-1-04 Edition)

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

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

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

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

(1) Serve a notice of noncompliance; or

(2) Serve a notice of proposed cancellation.

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

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

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

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

(f) If an operator fails to take any action that may be prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Sec-

retary, adequately justify the operator's failure to comply, then the Secretary may cancel the minerals agreement, specifying the basis for the cancellation. Cancellation of a minerals agreement shall not relieve the operator of any continuing obligation under the minerals agreement.

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

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

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

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

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

§ 225.37 Penalties.

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

that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

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

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

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

(e) Payment of penalties in full more than ten (10) days after a final decision imposing a penalty shall subject the operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Sec-

retary. In the absence of a specific minerals agreement provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

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

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

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

§ 225.38 Appeals.

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

§ 225.39 Fees.

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

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

§ 225.40 Government employees cannot acquire minerals agreements.

U.S. Government employees are prevented from acquiring any interest(s) in minerals agreements by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.