

## § 3610.1

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AUTHORITY: Minerals Management Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

SOURCE: 48 FR 27013, June 10, 1983, unless otherwise noted.

### Subpart 3610—Mineral Material Sales

#### § 3610.1 Procedures: General.

##### § 3610.1-1 Request for sale.

Under the provisions of this part, the authorized officer may sell mineral materials upon receipt of a written request by any person who expresses an interest in mineral materials; or his own initiative.

##### § 3610.1-2 Appraisal, reappraisal and measurements.

(a) No mineral materials shall be sold at less than fair market value as determined by appraisal.

(b) The authorized officer shall reappraise mineral materials disposed of under this part at intervals of not less than 2 years and shall adjust the contract unit price accordingly.

(c) Mineral materials may be measured by in-place volume or weight equivalent.

##### § 3610.1-3 Payments and termination by agreement.

(a) Under a contract of sale for mineral materials, the permittee:

(1) Shall not remove mineral materials until advance payment is made;

(2) Shall for contract sales of \$2,000 or less, pay the full amount at execution of the contract;

(3) May, when the sale exceeds \$2,000, make installment payments of not less than \$500 or 10 percent of the total purchase price, whichever is greater and shall: (i) For non-competitive sales, pay the first installment prior to or at the time the contract is awarded; (ii) for competitive sales, pay the first installment as a deposit at the time the

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bid is submitted, and (iii) pay each subsequent installment for non-competitive and competitive sales in an amount equal to the value of the mineral material removed prior to removal of the material;

(4) Shall pay the total amount of the purchase price no later than 60 days before the expiration date of the contract;

(5) Shall annually produce an amount sufficient to pay to the United States a sum of money equal to the first installment, or in lieu of such production, shall make an annual payment in the amount of the first installment. Annual payments shall be due on or before the anniversary date of the execution of the contract;

(6) Shall forfeit all monies paid when the required payments under the terms and conditions of the contract are not met. Failure to comply with the terms and conditions for payment shall constitute a breach of contract and the authorized officer may terminate the contract;

(7) Shall be required to make an annual report of production under the contract and to provide written verification of the amount of mineral materials removed upon request by the authorized officer to allow verification of payments.

(b) The permittee and the authorized officer may, by agreement, terminate the contract of sale at any time.

##### § 3610.1-4 Refunds or credits.

(a) Refunds or credits may be made to the permittee:

(1) If upon expiration total payments made exceed the total value of mineral materials covered by the contract;

(2) If it is determined by the authorized officer that insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(3) If materials paid for are unavailable as a result of termination of a contract, as provided in § 3610.1-3(b) of this title.

(b) Refunds of credits may not be made where the total payment made by a permittee does not exceed the administrative cost of processing the disposal action.

(c) Payments made in lieu of production, as provided in § 3610.1-3(a)(5), may

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be credited to future production, but not refunded, unless upon expiration, the total value of payments made exceeds the total value of mineral materials covered by the contract. Payments made in lieu of production prior to termination or relinquishment of contract will not be refunded.

### § 3610.1-5 Performance and reclamation bonds.

(a) The authorized officer shall require a performance bond of not less than \$500 or 20 percent of the total contract value, whichever is greater, for contracts of \$2,000 or more, except for contract sales or permits made from community pits when a reclamation fee is paid by the permittee.

(b) The authorized officer may require a reclamation or performance bond for contract sales of less than \$2,000, but in no event shall the bond be for more than 20 percent of the total contract value.

(c) A performance and reclamation bond may be a:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department;

(2) Cash bond, with a power of attorney to the Secretary to convert such cash upon default in the performance of the terms and conditions of the contract or permit; or

(3) Negotiable Treasury bond of the United States of a par value equal to the amount of required bond, together with a power of attorney to the Secretary to sell such securities upon default.

### § 3610.1-6 Assignments.

(a) The permittee may not assign the contract, permit or any interest therein without the written approval of the authorized officer. The authorized officer shall ensure that all terms and conditions agreed upon are contained in the assignment and are assumed by the assignee.

(b) The authorized officer shall not approve any proposed assignments involving contract performances unless the assignee furnishes a performance bond as required by § 3610.1-5 of this title or obtains a written commitment from the previous surety to be bound by the assignment when approved.

(c) Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and be subject to all the obligations under the contract, and the permittee shall be released from any further liability under the contract.

### § 3610.1-7 Extension of time.

The authorized officer may grant a one-time extension not to exceed 1 year, if the permittee:

(a) Submits a written request that is received by the authorized officer no later than 30 days or earlier than 90 days prior to the expiration date of the contract; and

(b) Shows, in writing that the delay in removal of the mineral materials was due to causes beyond the control of and without fault or negligence of the permittee.

### § 3610.2 Noncompetitive sales.

#### § 3610.2-1 Limitations in volume.

(a) When it is determined to be in the public interest, and where it is impracticable to obtain competition, the authorized officer may sell at not less than fair market value, without advertising or calling for bids, mineral materials not to exceed 100,000 cubic yards (or weight equivalent) in any individual sale.

(b) The authorized officer shall not approve noncompetitive sales that exceed the total aggregate of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one individual, partnership, corporation or entity in any period of twelve consecutive calendar months.

(c) The volume limitations in paragraphs (a) and (b) of this section shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipelines System or the Alaska Natural Gas Transportation System.

(d) The volume limitations contained in paragraphs (a) and (b) of this section shall not apply where the Director determines that circumstances make it impossible to obtain competition or where, because of an emergency situation affecting public property, health