

SUPERSEDED DECISION

STATE: Wisconsin

COUNTIES: Langlade, Lincoln,
& Marathon

DECISION NO. WI 84-5037

Supersedes Decision No. WI 83-2085, dated October 28, 1983 in 48 FR 50002
DESCRIPTION OF WORK: Building construction (excluding single family homes
and apartments up to and including 4 stories)

DATE: Date of Publication

COUNTIES: Langlade, Lincoln,
& Marathon

Basic Hourly Rates	Fringe Benefits	POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
\$17.65	2.01	ASBESTOS WORKERS	15.72	3.42
17.345	3.25	BOILERMAKERS	15.22	3.42
		BRICKLAYERS & STONEMASONS	14.44	3.42
13.22	2.19	CARPENTERS: Soft Floor LAYERS & LATHERS	13.88	3.42
13.66	2.11	CEMENT MASONS	13.41	3.42
12.72	2.19	ELECTRICIANS		
15.13	1.14	ELEVATOR CONSTRUCTORS:		
		Mechanic	16.43	2.69
		Helpers	8.50	2.69
		Helpers (Prob.)	8.215	
		IRONWORKERS:		
		Structural, Ornamental and Reinforcing	14.08	3.00
		LABORERS:		
		General & Air Spade Operator	11.03	1.43
		Mason Tender	11.28	1.43
		Jackhammer Operator, & Mortar Mixer	11.28	1.43
		PAINTERS:		
		Brush	13.85	.50
		Spray	14.60	.50
		PLASTERERS	13.22	2.20
		PLUMBERS & STEAMFITTERS	15.45	2.25
		ROOFERS	13.50	a
		SHEET METAL WORKERS	14.86	3.00
		TERRAZZO MECHANIC & TILE SETTER	12.97	2.20

WELDERS: Receive rate
prescribed for craft
performing operation to
which welding is
incidental.

FOOTNOTES:

- a. Employed for 1 year-
1 week vacation at
Regular Pay, Employed
for 7 years- 2 weeks
Vacation at Regular
Pay, Employed for
10 years-3week Vaca-
tion at Regular Pay

POWER EQUIPMENT OPERATORS (Classifications)

Group 1: Cranes, shovels, draglines, backhoes, clamshells,
derricks, caisson rigs, pile driver, skid rigs, dredge operator
and traveling crane (bridge type), concrete paver (over 27E),
concrete spreader and distributor.

Group 2: Concrete and grout pumps, material hoists, stack hoists,
tractor or truck mounted hydraulic backhoe, tractor or truck
mounted hydraulic crane (10 tons or under), manhoists, tractor
(over 40 h.p.), bulldozer (over 40 h.p.), end-loader (over 40
h.p.), motor patrol, scraper operator, sideboom, straddle
carrier, mechanic and welder, bituminous plant and paver
operator, roller (over 5 tons), rail level-machine (railroad),
tie placer, tie extractor, tie tamper, stone leveler, rotary
drill operator and blaster, percussion drilling machine, trencher
(wheel type or chain type having over 8-inch bucket), elevator.

Group 3: Backfiller, concrete auto breaker (large), concrete
finishing machines (road type), roller (rubber tire), concrete
batch hopper, concrete mixers (14S or over), screw type pumps,
and gypsum pumps, tractor, bulldozer, end-loader (under 40 h.p.),
pumps (well points), trencher (chain type having bucket 8- inch
and under), industrial locomotives, roller (under 5 tons) and
fireman (pile drivers and derricks), hoists (automatic), forklift
(over 12'), tampers-compactors (riding type), assistant engineer,
"A" frames and winch trucks, concrete auto breaker, hydrohammers
(small), brooms and sweeper, hoists (tuggers), stump chipper
(large), boats (tug, safety, work barges and launch).

Group 4: Shouldering machine operator, screed operator, farm or
industrial tractor mounted equipment, post hole digger, stone
crushers and screening plants, fireman (asphalt plants), air
compressor (400 CFM or over), augers (vertical and horizontal),
air, electric, hydraulic jacks (slip form), prestress machines,
skid steer loader, boiler operators (temporary heat), forklift
(12' and under).

Group 5: Generators over 150 KW, pumps over 3" combination small
equipment operator; compressors (under 400 CFM), welding
machines, heaters (mechanical), generators (under 150 KW), pumps
(3" and under), winches (small electric), oiler and greaser,
conveyor.

Unlisted classifications needed for work not included within the
scope of the classifications listed may be added after award only
as provided in the labor standards contract clauses (29 CFR, 5.5
(a)(1)(ii)).

Final Rule

Friday
September 28, 1984

Part III

Department of the Interior

Bureau of Indian Affairs
Office of Surface Mining Reclamation and
Enforcement

25 CFR Part 216
30 CFR Parts 700, 701, 710, 750, and 755
Surface Mining and Reclamation
Operations; Federal Program for Indian
Lands and Tribal-Federal
Intergovernmental Agreements; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Surface Mining Reclamation and Enforcement

25 CFR Part 216

30 CFR Parts 700, 701, 710, 750, and 755

Surface Mining and Reclamation Operations; Federal Program for Indian Lands and Tribal-Federal Intergovernmental Agreements

AGENCY: Bureau of Indian Affairs, Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) promulgates a final rule which sets forth the requirements for surface coal mining and reclamation operations on Indian lands and which describes the roles of the various Federal agencies involved in the regulation of surface coal mining and reclamation operations on Indian lands. A new subchapter, Subchapter E, is added to 30 CFR, Chapter VII, to include the Federal Program for Indian Lands. Part 750 is added to include requirements for mining operations on Indian lands. A new Part 755, covering Tribal-Federal Intergovernmental Agreements, is added to provide for the training of Indian tribes so that if and when Congress authorizes Indian regulation of surface mining through Indian programs, the tribes will be able to develop tribal regulatory programs.

EFFECTIVE DATE: September 28, 1984.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

This preamble is arranged as follows:

- I. Background
- II. Rules Adopted and Responses to Comments on Proposed Rules
- III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, provides statutory authority for the development of regulations for surface coal mining operations. Mining on lands within the

States is subject to a two-phase regulatory scheme: First an interim regulatory program, then a permanent regulatory program in which primary regulatory authority is vested in the States, or in OSM if the State does not seek or obtain primary regulatory authority ("primacy").

Section 710 of the Act also provides for a two-phase program for the regulation by the Secretary of the Interior ("Secretary") of surface coal mining operations on Indian lands. Section 710(c) of the Act describes the first phase and states: "on and after one hundred and thirty-five days from the enactment of this Act [August 3, 1977], all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act." The Department of the Interior issued regulations implementing these interim performance standards on December 15, 1977. They are codified at 25 CFR Part 216, Subpart B (42 FR 63395, December 16, 1977 and 47 FR 13327, March 30, 1982) and are similar to the interim program performance standards for non-Indian and non-Federal lands found in 30 CFR Part 715 (42 FR 62639). While the interim standards applicable to Indian lands differ little from those applicable to non-Indian lands, they necessarily recognize certain procedures and considerations which apply only to Indian lands. Specifically, the inspection and enforcement procedures in 25 CFR 216.112 through 216.114 differ from those in 30 CFR Parts 720 through 723 in that they provide for tribal involvement in the process.

Section 710(d) describes the second phase for regulating mining on Indian lands. Section 710(d) requires compliance with sections 507, 508, 509, 510, 515, 516, 517 and 519 of the Act, "on and after 30 months from the enactment of the Act [February 1980]." It also requires the Secretary to incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

On October 24, 1983, OSM published a proposed rule implementing the requirements of section 710(d) for mining on Indian lands (48 FR 49174-49183). The notice announced a 60-day comment period ending on December 23, 1983, and scheduled public hearings for Washington, D.C., and Denver, Colorado, on December 14, 1983. No one asked to testify at the public hearing in Washington, D.C.; therefore, the hearing was canceled. At the public hearing held in Denver, five persons testified.

Shortly before the comment period closed, OSM received several requests to extend the comment period from December 23, 1983, to January 31, 1984, and to hold a public hearing in Gallup, New Mexico. OSM extended the comment period on December 20, 1983 (48 FR 56244) to January 31, 1984, and scheduled the public hearing for January 25, 1984, in Gallup, New Mexico. Seven persons testified at the January 25th public hearing.

OSM sought to provide an opportunity for early and meaningful public participation during its regulatory review. To this end, OSM met with or reviewed comments and recommendations from the Indian tribes, representatives of coal mining States containing Indian lands, industry representatives and representatives of environmental organizations. All substantive comments were carefully considered in the rulemaking process and are addressed in this preamble.

The Federal program for Indian lands is similar to the Federal programs OSM implemented under section 504 of the Act for States not seeking primacy in that it cross-references provisions of the permanent regulatory program in 30 CFR Chapter VII. The final rule also resembles the Federal lands program (30 CFR Chapter VII, Subchapter D) in that it outlines responsibilities of agencies within the Department of the Interior, other than OSM, and takes into account the trust responsibilities the Department has to tribes regarding lands subject to regulation by the Act.

The regulations adopted today implement the sections of the Act specified in section 710(d) of the Act. In addition, the regulations implement other sections of the Act which are otherwise applicable either by necessary implication from one or more of the listed sections or because the sections are applicable to all mining.

The content and organization of the Federal program for Indian lands follows the permanent program regulations which implement the procedures and performance standards of the Act. But, as mentioned above, instead of the full text appearing, each section includes only a reference to the pertinent part in the permanent program regulations. Separate paragraphs were added for sections in which differences exist between the Federal permanent program regulations and the Federal program for Indian Lands. One effect of this cross-referencing to the permanent program regulations is that when the permanent program regulations are revised, the Federal program for Indian lands will be similarly revised.

The content and organization of the Federal program for Indian lands are based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

- Subchapter A—General
- Subchapter F—Areas Unsuitable for Mining
- Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs
- Subchapter H—Small Operator Assistance
- Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
- Subchapter K—Permanent Program Performance Standards
- Subchapter L—Permanent Program Inspection and Enforcement Procedures
- Subchapter M—Training Program for Blasters and Members of Blasting Crews, and Certification Program for Blasters

Technical literature cited by OSM in the preamble to the permanent regulatory program (44 FR 14901-15309, March 13, 1979), or in subsequent rulemaking notices revising those rules was relied upon in developing the Federal program for Indian lands. The reader is referred to those preambles for a discussion of the basis and purpose of permanent program rules referenced without substantive change in the Indian lands program.

II. Rules Adopted and Responses to Comments on the Proposed Rules

A. General Comments

A number of commenters suggested that OSM withdraw the proposed regulations which govern surface mining and reclamation activities on Indian lands because they believe that OSM lacks authority to promulgate the regulations at this time. The commenters argued that Congress envisioned in section 710 of the Act a three-part scheme for the regulation of surface coal mining on Indian lands. First, a study of the question of regulation of surface mining on Indian lands was to be completed taking into consideration the special jurisdictional status of these lands. Second, a report was to be made to Congress to include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface coal mining on Indian lands. And third, following enactment of Indian lands legislation by Congress, a permanent regulatory program for the regulation of surface coal mining on Indian lands was to be developed by OSM that provided an opportunity for the Indian tribes to administer the program in appropriate circumstances. The commenters recognized, however, that section 710

provided for certain provisions of the Act to be applicable to coal mining operations on Indian lands pending adoption of a final regulatory program. In the alternative, they urged OSM to limit the scope and effect of the regulations to those provisions of the Act cited in sections 710 (c) and (d) therein.

OSM disagrees with the commenters' assertions that OSM lacks the authority to promulgate regulations governing surface coal mining and reclamation operations on Indian lands. Sections 710 (c) and (d) clearly require the Secretary to regulate mining on Indian lands. The rules adopted today implement the sections of the Act identified in section 710(d) or which are needed by necessary implication. They also cover sections of the Act pertaining to all surface coal mining operations, such as section 522(e). Section 102(a) of the Act states that "it is the purpose of this Act to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations (emphasis supplied)." Section 201(c)(2) provides that "the Secretary, acting through [OSM], shall publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Therefore, the Act provides OSM with ample authority to promulgate these rules. This action is consistent with the opinions of the District Court for the District of Columbia, *In Re Surface Mining Regulation Litigation*, 456 F. Supp. 1302, 1324 (1978) and of the Court of Appeals for the District of Columbia, *In Re Surface Mining Regulation Litigation*, Civ. No. 78-2109, *et seq.*, 32 (D.C. Cir. 1980).

One commenter objected to the promulgation of the regulations in final form until after they are redrafted and republished in the *Federal Register* as proposed rules.

OSM rejects the commenter's suggestion. The rules adopted today are well within the scope of the proposal on which OSM has provided the public ample opportunity to comment.

One commenter contended that the preamble to the proposed rule inadequately explained the basis and purpose for many aspects of the proposal.

OSM does not agree, but has nevertheless amplified these matters in the preamble published today both in general and in response to specific comments.

One commenter urged OSM to make it clear in the preamble what regulations, as revised, are part of the program and

to include the full text of the relevant regulations.

OSM rejects the comment. The use of cross-referencing offers considerable advantages in convenience and cost. It also results in administrative simplicity in that there is one basic set of regulations for all Indian lands and Federal program States. The permanent program rules, besides being directly applicable on Indian lands and in Federal program States, provide the measure for State program approval. Thus, all regulatory programs are ultimately based on OSM's permanent program rules. If those rules are changed, then it automatically effects a change in programs using cross-referencing. The public may comment once, rather than reiterating comments each time a program is revised which embodies the changed requirements.

Numerous commenters contended that the definition of the term "Indian lands" is inadequately explained in these regulations. Therefore, they asserted, the applicability of the rules is unclear.

It is not the intent of these regulations to amend the definition of Indian lands in the Act nor to resolve the various disputes between and among tribes and States. Rather, OSM is responsible for enforcing the law as it exists. Congress provided a definition of "Indian lands" in section 701(9) of the Act, which definition appears verbatim in 30 CFR 700.5. The Federal program promulgated here today applies to all "Indian lands" as that term is defined in the Act. Thus, OSM will continue to regulate as Indian lands all lands within the exterior boundaries of Indian reservations, allotted lands, and all lands where either the surface or minerals are held in trust for or supervised by an Indian tribe or individual Indians.

One commenter recommended that OSM replace 25 CFR Part 216, Subpart B, with a new 30 CFR Part 750 administered by OSM. The commenter also asserted that 30 CFR Part 750 should replace as well 25 CFR Part 216, Subpart A, which concerns coal exploration, surface coal mining permits, and mining plans on Indian lands. The commenter contended that centralizing all such responsibilities in OSM would streamline the regulations and simplify the process. In addition, the commenter suggested that 25 CFR Part 216, Subpart A, should be made applicable to severed mineral estates.

Under the rule adopted today, after OSM makes an initial administrative decision approving or disapproving a permit application for a surface coal mining operation as required by Part 750, then 25 CFR Part 216, Subpart B will

cease to be applicable to that operation. The October 1983 notice did not propose to amend 25 CFR Part 216, Subpart A. That Subpart, which contains procedures for approval of exploration and mining plans, does not implement the Act or specify OSM's functions. It remains unchanged by this rulemaking.

One commenter stated that the tribes are independent and that they are distinguishable from States. In addition, the commenter contended that the regulations are a direct infringement on the tribes' rights to be recognized as legal entities.

OSM recognizes the difference between Indian tribes and States and the special relationship between the U.S. Government and the Indian tribes. All of this is evidenced by the inclusion of section 710 in the Act and OSM's promulgation of the Federal program for Indian lands to fulfill that congressional mandate. These rules do not diminish the tribes' rights to be recognized as legal entities. The rules merely implement the requirements of the Act that OSM regulate surface coal mining operations on Indian lands. Moreover, OSM submitted legislation to Congress on February 17, 1984, as required by sections 710(a) and 710(b) of the Act. When and if the legislation is enacted, it would give the tribes the opportunity to become the regulatory authorities on Indian lands.

Several commenters requested that OSM clarify the somewhat confused role of the States in the regulation of coal mining on Indian lands. A commenter contended that the preamble to the proposed rules is inconsistent in stating that the proposed regulations would not grant, endorse, or revoke any State or tribal jurisdiction (48 FR 49175) and then proposing to make § 843.14(c) inapplicable to Indian lands (48 FR 49178) because no State regulatory authority would have jurisdiction over Indian lands. The commenters argued that OSM should assume exclusive jurisdiction within reservation boundaries and that jurisdiction should remain with the States outside reservation boundaries. The commenters believed that adoption of this suggestion would avoid jurisdictional conflicts and duality of regulation.

The issue of jurisdiction and the role of the States is not easily resolved. Section 710(h) expressly provides that the Act does not change the jurisdictional status of Indian Lands. The Act makes no provision for tribes to become regulatory authorities. The most reasonable inference, then, is that the Secretary (through OSM) is charged with regulating surface coal mining

operations on all Indian lands. The definition of Indian lands in § 701(9) of the Act provides jurisdiction to OSM to regulate surface coal mining operations on lands outside the reservation that are held in trust for or supervised by an Indian Tribe. Accordingly, OSM must regulate these off-reservation lands and may not be constrained by any State from doing so.

Several commenters argued that the proposed Indian lands regulations are out of keeping with the Congressional intent of § 710 of the Act. They alleged that the Congressional purpose is to allow tribes to assume full regulatory authority over surface mining. Commenters maintained that OSM failed to satisfy § 710 by failing to submit the required reports and recommendations to Congress regarding development and implementation of legislation which would allow tribes to obtain primacy. One commenter asserted that the proposed rules appear to preempt the role of Congress under § 710 and that the Federal program for Indian lands is contrary to prevailing Federal policy decisions of the Supreme Court upholding the sovereign powers of Indian Tribes.

The promulgation of a Federal regulatory program for surface coal mining and reclamation operations on Indian lands is consistent with Congressional intent of § 710 of the Act. Promulgation of these rules has no bearing on the Indian lands legislative report presented to Congress. The Congress declined, when passing the Act, to give primacy to Indian tribes. Instead, the Secretary was charged with the responsibility to promulgate and administer the regulatory program on Indian lands. Congress knew that a period of time would elapse between the passage of the Act and the enactment of any subsequent legislation providing additional authority to Indian tribes. During this period, OSM is the regulatory authority. Promulgation of the Federal program for Indian lands will neither delay nor impede tribes from obtaining primacy; it will ensure that all mining operations on Indian lands are conducted in accordance with permanent program standards until tribes are given the authority to seek and obtain primacy.

B. Specific Regulatory Changes and Comments

25 CFR Part 216, Subpart B

In the October notice, OSM proposed to delete Subpart B of 25 CFR Part 216, the interim Indian lands program, in its entirety. Upon review, OSM has decided not to do so. Rather, OSM has amended

the applicability provision of Subpart B so that the performance standards contained therein remain applicable to each surface coal mining operation on Indian lands until OSM issues or denies the permit in accordance with the requirements of 30 CFR Part 750. Under the proposal, the performance standards of Part 750 would have been applicable to all operations on Indian lands as soon as the program became effective. By requiring the performance standards of Part 216, Subpart B to govern until OSM issues or denies a permit as required by 30 CFR Part 750, OSM intends to minimize abrupt dislocations associated with the immediate implementation of a new regulatory program. Of course, continued authority to operate under the Federal program for Indian lands requires a permit application to be filed with OSM within two months.

Although the performance standards of 25 CFR Part 216, Subpart B will remain in place, the inspection, enforcement, and civil penalty provisions in §§ 216.112, 216.113, and 216.114 are removed as proposed. They are superseded by the provisions of 30 CFR Parts 842, 843, and 845. Because existing operations will continue to comply with the Part 216, Subpart B performance standards rather than with those in 30 CFR Part 816, or 817, until a permit decision is made, use of the permanent program inspection and enforcement regulations will cause no undue hardship on non-complying operators. As is the case for other cross-referenced rules, having one set of uniform rules in place makes administration of the Act simpler and more efficient.

Section 700.1 Scope. OSM amends the "Scope" section of the introductory subchapter in 30 CFR Chapter VII to show that the Federal program for Indian lands is included in Subchapter E, and that the Federal program for Indian lands cross-references other parts of the permanent regulatory program.

Section 700.1(e) One commenter requested that § 700.1(e) be revised to read "Subchapter E of this chapter contains regulations that apply to surface coal mining and reclamation operations conducted on Indian lands." The commenter reasoned that this suggested change would avoid the wholesale incorporation of existing regulations and would limit the scope of the proposed regulations to those provisions of the Act specifically set forth in sections 710 (c) and (d).

OSM has accepted the commenter's suggested language in the interest of simplifying the regulations. The change

does not, however, lessen the incorporation of permanent program regulations into the Federal program for Indian lands, since Part 750 makes most of those regulations applicable to Indian lands.

Section 700.11 Applicability. Section 700.11 describes the applicability of the permanent regulatory program. OSM, as proposed, has amended § 700.11 to delete paragraph (a)(5) thereby making 30 CFR Chapter VII applicable to surface coal mining operations on Indian lands. OSM received no comments on the proposed deletion of § 700.11(a)(5).

Section 701.1 Scope. Part 701 of the permanent regulatory program provides introductory material for the permanent regulatory program rules. OSM amends § 701.1 to redesignate paragraphs (b)(3) through (b)(8) as paragraphs (b)(4) through (b)(9) and to add a new paragraph (b)(3) showing Subchapter E, the Federal program for Indian lands, as the program applicable to such lands. OSM received no comments on the proposed adoption of paragraph (b)(3).

Section 701.3 Authority. Section 701.3 describes the authority of the Secretary to promulgate regulations establishing the permanent regulatory program. OSM amends it to include the Secretary's responsibilities on Indian lands.

A commenter suggested that OSM has authority only to impose permanent environmental protection standards (performance standards) upon operations on Indian lands.

OSM disagrees. The clear intent of § 710(d) of the Act is to impose most of the programmatic aspects of a permanent regulatory program upon surface coal mining and reclamation operations on Indian lands. These aspects include permit application requirements, reclamation plan requirements, performance bonds, permit approval or denial, environmental protection performance standards, surface effects of underground coal mining operations, inspections and monitoring, and release of performance bonds or deposits. Until such time as the Congress enacts legislation allowing the most reasonable and efficient means for Tribes to assume the role of regulation authority, implementation of these regulatory aspects on Indian lands is through the establishment of a comprehensive Federal regulatory program.

Section 701.4 Responsibility. Existing § 701.4 outlines the responsibilities of the Secretary and OSM. OSM has adopted a new paragraph (h) which states that Subchapter E contains the Secretary's, the Director's, and other Federal

agencies' responsibilities on Indian lands.

Two commenters pointed out that proposed § 701.4(h) failed to ascribe any responsibility to the affected Indian tribes in the administration of the Federal program for Indian lands.

A discussion of the role of affected tribes is included in the response to comments for § 750.6, below. Specific responsibilities of the Bureau of Indian Affairs (BIA) and other Federal authorities are enumerated in § 750.6.

Section 701.11 Applicability. OSM amends § 701.11 by adding a new paragraph (c). Proposed paragraph (c) paralleled the requirements for lands within a State and for Federal lands in § 701.11(a) and (b). OSM has made two changes from the proposal in the final rule by changing the proposed first word "each" to "any," and by deleting the reference to Part 750 in § 701.11(c) (2).

As mandated by § 701.11 and 750.11, all persons expecting to conduct surface coal mining and reclamation operations on Indian lands eight months after the effective date of Subchapter E (today) are required to apply within two months of the effective date for a permit pursuant to the requirements of the Federal program for Indian lands. OSM will then make the necessary findings to determine whether the permit application is in compliance with the requirements of the Federal program for Indian lands and issue or deny a permit based upon those findings.

A commenter requested that § 701.11 expressly state that operators must comply with applicable statutory provisions, lease terms, etc., even during the eight-month period granted for obtaining a permit.

Taken in conjunction with the requirements of 25 CFR Part 216, Subpart B, which remains applicable until OSM makes an initial administrative decision on a permit application, § 701.11(c) (2) defines the terms and conditions under which existing operations can continue to mine during the period between program implementation and issuance or denial of the permit. As stated in this section, those operations authorized to continue during and beyond the eight month period must comply with all terms and conditions of the existing authorization to mine, the requirements of the Act, 25 CFR Part 216, and the requirements of all applicable mineral lease agreements, leases, or licenses. Because 25 CFR Part 216, Subpart B will apply until a permit decision is made, the proposed reference to Part 750 is unnecessary.

A commenter suggested that OSM not adopt § 701.11(c) because section 710 of the Act does not specifically authorize

the Secretary to issue permits pursuant to a Federal program for Indian lands. The commenter suggested that Indian tribes may not recognize the validity of a permitting program and that the scope of the proposed regulations should be limited to the sections of the Act specified in section 710.

OSM has authority to require permits on Indian lands. Although section 710(d) of the Act does not list section 506 (permits) of the Act as an applicable provision on Indian lands, the authority to require permits is necessarily inferred from the explicit citation in section 710(d) of the Act of sections 507 (application requirements), 508 (reclamation plan requirements) and 510 (permit approval or denial). Sections 507 and 508 of the Act contain all the basic requirements for permit applications and reclamation plans. More specifically, section 510(a) of the Act requires that "upon the basis of a complete mining application and reclamation plan * * * pursuant to an approved State program or Federal program under the provisions of this Act * * * the regulatory authority shall grant, require modification of, or deny the application for a permit in a reasonable time set by the regulatory authority and notify the applicant in writing." The most reasonable and logical means to implement the provisions of sections 507, 508, and 510 of the Act for surface coal mining and reclamation operations on Indian lands is through the permitting process as set forth in a Federal program for Indian lands.

One commenter stated that the proposed rules do not recognize that most operations on Indian lands are already subject to the requirements of section 710(d) of the Act and that requiring permit applications for those operations would be only a paperwork exercise. The commenter suggested language to modify § 701.11(c) which would eliminate the permit application requirement. The commenter maintained that the permitting effort would be meaningless and impractical because most operations on Indian lands hold authorizations requiring compliance with permanent program requirements. The commenter stated that the existing authorizations already address all of the provisions of sections 710 (c) and (d) of the Act and "re-permitting" would be costly and excessive to operators. The commenter suggested that OSM incorporate a mechanism whereby an operator could simply reference his existing approval.

OSM disagrees with the assertion that most existing operations on Indian lands

currently hold authorizations or approvals issued under permanent regulatory program requirements. Effectively, what the commenter is asserting is that operators are satisfying the performance standards of sections 515 and 516. Many surface coal mining and reclamation operations on Indian lands may well be complying with most aspects of the proposed Federal program for Indian lands. However, section 710(d) of the Act also references the requirements of sections 507, 508, 509 and 510 of the Act. Permitting of existing operations is far from meaningless. It is necessary to ensure that operators have undertaken proper planning efforts and will continue to comply with applicable performance standards. OSM's actions in reviewing and scrutinizing permit applications and making permit findings provide the extra level of environmental protection that the Act requires. Thus, OSM disagrees with the commenter's suggestion that the re-application process is merely a paperwork exercise for those operations now in compliance with most of the permanent regulatory program requirements.

Although a formal application is required for each existing operation OSM will determine the type and extent of application necessary on a case-by-case basis. For example, for those permit applications which are filed with, and are being reviewed by, OSM, an application under the permanent program may take the form of a letter from the operator requesting that the application already on file be reviewed for compliance with the Federal program for Indian lands. In those instances in which the application already on file is fairly complete in meeting permanent program requirements, OSM anticipates only minor resubmissions or modifications of the application. On the other hand, if the application on file has not been prepared on accordance with the permanent regulatory program requirements, and if it has not been reviewed by OSM pursuant to these requirements, then OSM anticipates requiring a complete resubmission of the application for a permit under the Federal program for Indian lands.

Two commenters suggested that the language in § 701.11(c) be changed from "shall have" to "shall be required to obtain."

OSM disagrees with the commenters' suggestion. Section 701.11(c) retains the proposed language. It tracks the other paragraphs of § 701.11 and requires that authorization to mine be dependent upon a permit having been issued.

Another commenter suggested that the language in § 701.11(c) be changed from "on Indian lands on or after eight

months" to "on Indian lands on and after eight months."

OSM rejects the proposed change. The requirement to have a permit applies to all surface coal mining and reclamation operations conducted on or after eight months from this date. It is irrelevant when the operation begins or whether it is conducted on a date eight months in the future.

Two commenters requested that OSM change § 701.11(c) (1) to state that all permit applications must have prior approval by the affected Indian tribes before they are approved by the Director of OSM.

OSM disagrees with the proposed change. The Act makes no provision for approval by an affected Indian tribe. However, § 750.6(a)(2) provides for consultation with BIA during the permit application review process. BIA, in turn, is required to consult with the affected Tribes by § 750.6(d)(1).

A commenter suggested deleting the requirement of § 701.11(c)(1) to submit an application within two months of the effective date of the Federal program for Indian lands.

OSM disagrees with the suggested deletion. This requirement applies only to those operators who wish to continue to conduct existing surface coal mining operations beyond eight months from the effective date of this program. It is important that such operations quickly come within the purview of the permanent program. The timely filing of applications will allow OSM to examine the operators' plans and act on applications in a manner ensuring maximum protection to the environment. No unreasonable burden is imposed upon operators by this requirement which is similar to a requirement imposed at the outset of Federal and State programs.

Section 710.11 Applicability. In the final rules adopted today, OSM has made a conforming change in 30 CFR 710.11(b), the applicability section of the Initial Program Regulations. The change reflects OSM's decision to retain 25 CFR Part 216, Subpart B, and allow the provisions contained therein to remain applicable to surface coal mining operations conducted on Indian lands until OSM makes an initial administrative decision on a permit application pursuant to Part 750.

Part 750—Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

Part 750 contains the substantive requirements for surface coal mining and reclamation operations on Indian lands.

Section 750.1 Scope. Section 750.1 provides a "Scope" section for the Indian lands subchapter.

Section 750.5 Definitions. Section 750.5 includes several definitions which are applicable only to operations on Indian lands. The new definitions are applicable when used in Subchapter E or for regulating mining on Indian lands when used in a part that has been cross-referenced in Subchapter E.

A definition for the term "local governmental agencies" has been added to show that references to local government agencies include tribal governments on Indian lands.

A commenter questioned whether the term "Indian mineral owner," as defined in § 750.5, included Alaskan native—Aleuts, Indians, and Eskimos—regional and village corporations. The commenter pointed out that BIA has no trust responsibilities over the regional and village corporation lands, and questioned whether the State or OSM would regulate coal mining activities thereon if the lands fall outside the scope of these rules.

The only lands in Alaska which are governed by the Federal program for Indian lands are those lands within Indian reservations, such as the Metlakatla Reservation, and those lands held in trust for or supervised by an Indian tribe. Lands patented to a village corporation pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203, 43 U.S.C. 1601 (ANCSA), in which the ANCSA corporation conveyed the land to a corporation formed under the Indian Reorganization Act, are outside the definition of Indian lands. Surface coal mining and reclamation operations on ANCSA village and regional corporation lands are therefore subject to regulation by the State of Alaska.

OSM has amended the definition of Indian mineral owner at § 750.5 to indicate that lands patented to a village or regional corporation pursuant to the ANCSA are not "Indian lands" within the meaning of section 701(9) of the Act.

A commenter suggested that the rules do not recognize the role of Indian tribal governments. The commenter believed that the phrase "local government agencies with jurisdiction over an area or an interest in the area of proposed operations" inadequately describes the role of tribal governments. The commenter suggested amending the definitions by adding that "local government agencies" means Indian tribal governments, in addition to any county, city or township government.

OSM agrees with the commenter's suggestion that for Indian lands the term

"local government agencies" should be expanded to include Indian tribal governments. OSM has added the suggested phrasing in § 750.5.

Section 750.6 Responsibilities. The section sets out the responsibilities of OSM, BIA, the Bureau of Land Management (BLM), and the Minerals Management Service (MMS) regarding coal mining activities on Indian lands. The intent of the section is to outline coordination obligations for agencies having specific responsibilities for coal mining and reclamation activities on Indian lands. It does not establish, nor is it intended to establish the roles of agencies other than OSM. It merely enumerates the responsibilities in one place for the readers' convenience.

Several corrections and clarifications were made in § 750.6 to ensure consistency in agency responsibility. The section clarifies several issues: (1) The responsibilities of BLM for coal exploration on Indian lands; (2) the role of BIA for consulting with the affected Indian tribes in the permitting process; (3) the role of BLM in monitoring and administering contract, lease, or mineral agreements, and (4) the role of OSM and BIA with respect to bonding responsibilities.

General Comments Concerning § 750.6. A commenter contended that the description of the roles of BIA, OSM, and BLM failed to recognize the tribes' role as lessors. The commenter also stated that Secretarial approval and tribal consent are required before any lease on Indian Trust lands can be negotiated.

The Commenter's concern over the rule is unfounded. The section describes a procedural arrangement by which the BIA, OSM, and BLM, coordinate and execute their respective functions and responsibilities for coal operations on Indian lands. The section does not delineate in detail the relationship of the tribes to the BIA, BLM, and OSM. It recognizes the lead role of the BIA in the Federal-Indian trust relationship and in securing consultation with the tribes. It neither impedes nor interferes with the tribes' role as lessors. Nothing in the rule adopted today vitiates the role of the tribes as lessors or alters other statutory and regulatory prerogatives of the Secretary with respect to Indian lands.

Several commenters believed that proposed § 750.6 excluded tribal involvement in the decisionmaking process for the regulation of surface coal mining operations on Indian lands. The commenters argued that the proposed regulations reflect a significant retreat from current OSM practices with respect to tribal involvement. One commenter

requested that OSM discuss the cooperative role of tribes. Other commenters requested that explicit provisions be made for a tribal right to participate in the regulatory process. Commenters suggested that OSM consult with and defer to the affected tribes prior to approval of any permit. Other commenters stated that the Secretary, as part of his trust responsibilities to the tribes, must include them in his decisionmaking regarding the mining of coal on Indian lands.

One commenter recommended providing tribes the same level of participation as allowed the States under a permanent Federal program. Commenters asserted that if OSM merely consulted with BIA on issues involving tribal resources, then OSM would not be giving tribes the special consideration Congress intended.

OSM did not intend to diminish the tribes' participation and will continue to encourage tribal involvement regarding surface coal mining and reclamation operations on Indian lands. During the permit application review process, OSM ensures that the affected tribes receive a complete copy of the application and all revisions and amendments thereto. OSM encourages and actively seeks comments from the tribes during this process. OSM has also fostered this cooperative role through implementation of tribal-Federal cooperative agreements funded by OSM on an annual basis. Under these agreements OSM has: (1) Solicited input from designated tribal officials and staff concerning all phases of permit application review for operations on Indian lands; (2) assisted tribes in the establishment of tribal commissions or agencies with responsibilities for providing meaningful participation in surface coal mining regulatory activities; (3) provided cooperative funding for staffing of these entities; (4) provided technical training to tribal staff to assist in their understanding of surface coal mining regulatory issues and processes; and (5) provided tribal representatives with an opportunity to participate in inspection activities on all existing surface coal mines on Indian lands.

Further, OSM, with full approval and participation from the tribes, has developed and is implementing detailed technical training programs which will enhance tribal staff development and expertise in the permit application review process. OSM supports the efforts of tribal governments to develop tribal codes and regulations leading toward eventual assumption of regulatory authority by tribes for surface coal mining activities on Indian lands if

and when authorized by Congress. OSM field offices invite tribal participation in inspection of each existing mine on Indian lands. OSM regularly encourages tribal input concerning technical issues and policy issues for surface coal mining regulatory activities on Indian lands.

OSM also recognizes the lead role of the BIA in the Federal-Indian trust relationship and in securing formal consultation with the tribes. OSM makes no attempt to change those policies. Under the Surface Mining Act, however, OSM is the sole regulatory authority on Indian lands and may not delegate decisionmaking authority to the tribes.

One commenter asserted that § 750.6 provides for too many Federal agencies to become involved in the permitting process and recommends that OSM assume all of the functions of MMS and BLM; provide for tribal responsibility for collecting and accounting for royalties and other income from mineral agreements; and minimize BIA involvement by limiting BIA's responsibilities. Another commenter suggested revising § 750.6 to read in its entirety, "OSM shall be the regulatory authority on Indian lands" because the Act contains no authority for division of these responsibilities among agencies.

OSM disagrees with the commenter's suggestions to reduce or eliminate the responsibilities of other Federal agencies. The involvement of other Federal agencies as specified in § 750.6 is necessary to ensure that the responsibilities of these agencies are carried out on Indian lands as mandated by the Act and other applicable laws. With respect to the commenters' other suggestions, neither the Act nor these regulations provide any authority for tribes to assume responsibilities, such as royalty collection, which are delegated to Federal agencies.

One commenter objected that proposed § 750.6 failed to set limits which govern the amount of time reviewing agencies can take to review permit applications and mining plans. The commenter believed that without the imposition of time limits reviewing agencies could substantially delay the development of coal resources on Indian lands.

OSM rejects the commenter's suggestion to specify time limitations in § 750.6 for reviewing permit applications. The time limits established in Subchapter G of 30 CFR Chapter VII are applicable on Indian lands and are sufficient. OSM processes applications as expeditiously as possible and generally notifies applicants of the typical review time frames far enough in

advance to avoid unnecessary delays in the permit application review process.

Section 750.6(a)(1). Section 750.6(a)(1) states that OSM shall be the regulatory authority on Indian lands. As discussed above, a number of commenters inferred that OSM's assumption of the role of regulatory authority operated to diminish the rights of tribal governments. OSM disagrees. OSM neither intends nor believes that these rules diminish the rights of tribal governments.

Section 750.6(a)(2). Proposed § 750.6(a)(2) provided that after consulting with BIA, OSM would approve, conditionally approve, or disapprove permit applications for surface coal mining and reclamation operations on Indian lands or revisions or renewals thereto, and applications for the transfer, sale or assignment of such permit rights. Final § 750.6(a)(2) is adopted essentially as proposed, with the change described below.

A commenter suggested the inclusion of the BLM in the consultation process described in § 750.6(a)(2) for the review, approval, or disapproval of permit applications because of BLM's role in coal operations on Indian lands and familiarity with the operator and the land involved. The commenter pointed out that BLM has the responsibility for exploration plans and for approving or disapproving mining plans under 25 CFR 216.7.

OSM agrees with the commenter, and has changed § 750.6(a)(2) to read, "After consultation with the Bureau of Indian Affairs, and, as applicable, the Bureau of Land Management * * *." To the extent practicable, OSM expects to take into account the recommendations of the other agencies within the Department.

Section 750.6(a)(3). Proposed § 750.6(a)(3) is adopted as proposed. It provides that OSM shall conduct inspection and enforcement activities with respect to surface coal mining and reclamation operations on Indian lands.

One commenter asserted that the proposed regulations wrongly assume that Federal inspection of Indian lands is lawful under all circumstances, and cited two cases, *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709 (10th Cir. 1982) and *DeCoteau v. District County Court*, 420 U.S. 425, n.2 (1975), to support the objection.

OSM disagrees with the objection for several reasons. Section 517(b)(3) of the Act provides that authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials:

(A) shall have the right of entry to, upon or through any surface mining and reclamation operations or any premises in which records required to be maintained under paragraph (1) of this subsection are located; and

(B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

The Act, therefore, expressly authorizes warrantless entries. Also, the court in the *In Re Surface Mining Regulation Litigation*, *supra*, held that the warrantless search provisions of the Act and the regulations are reasonable, as limited by the Secretary. More recently, the U.S. Supreme Court reaffirmed the right of government agents to enter upon open fields for the purpose of carrying out government business and stated that the government's intrusion upon open fields is not an "unreasonable" search proscribed by the Fourth Amendment. *Oliver v. United States*, No. 82-15, Slip Op. (April 17, 1984).

Section 750.6(a)(4). Proposed § 750.6(a)(4) required that OSM consult with the BIA with respect to special requirements relating to the protection of non-coal resources of the area affected by surface coal mining and reclamation operations, and assure operator compliance with such special requirements. OSM, in response to numerous comments criticizing the apparent lack of tribal involvement in the regulation of surface coal mining activities, has added language to this section to provide that OSM will consult also with the affected tribes.

Section 750.6(a)(5). Final § 750.6(a)(5) provides that OSM shall consult with the BLM concerning requirements relating to the development, production and recovery of mineral resources on Indian Lands. It is adopted unchanged from the proposal.

Section 750.6(a)(6). Final § 750.6(a)(6), which is adopted as proposed, provides that OSM shall approve environmental protection performance bonds and liability insurance required for surface coal mining and reclamation operations on Indian lands, but not the production royalty bond. The provision is intended to implement OSM's statutory responsibility under section 509 of the Act. This section has no effect on the responsibilities of other agencies in the Interior Department under 25 CFR 216.8, which concerns the filing of performance bonds upon approval of an exploration or mining plan in accordance with the provisions of 25 CFR Part 216 Subpart A. However, if the performance bond filed with OSM adequately covers the costs of reclamation, the amount of the bond

required under 25 CFR 216.8(b) may be reduced appropriately.

Section 750.6(a)(7). Final § 750.6(a)(7) provides that OSM shall ensure compliance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, with respect to permitting actions for surface coal mining and reclamation operations on Indian lands. It is adopted unchanged from the proposal.

Section 750.6(b). Final § 750.6(b) enumerates BLM's responsibilities. Under § 750.6(b)(1) BLM is responsible for receiving, reviewing and conditionally approving, approving, or disapproving exploration plans and mining plans as provided in 25 CFR Chapter I, or specific Indian mineral agreements. Final § 750.6(b)(2) is identical to the proposed section. It establishes that BLM is responsible for administering and conducting inspection and enforcement for coal exploration operations on Indian lands.

Surface coal mining operations on Indian lands may be subject to one of two types of mining plan approval requirements. The rule at 25 CFR 216.7 requires operators to obtain mining plan approvals if their leases for mining Indian coal were issued after January 18, 1969. Leases issued prior to that date may expressly require operators to comply with provisions of 30 CFR Part 211 "now or hereafter in force," or comparable provisions. Because 30 CFR Part 211, which has been redesignated as 43 CFR Part 3480, requires operators to obtain mining plan approvals prior to conducting operations, the requirements of 43 CFR Part 3480 may be applicable to some operators under certain mineral agreements.

BLM has primary responsibility under 25 CFR Part 216, Subpart A for regulating coal exploration on Indian lands. BLM is responsible for receiving, reviewing and approving or disapproving coal exploration plans; administering and conducting inspection and enforcement with regard to requirements for coal exploration on Indian lands; and administering and conducting inspection and enforcement of minerals agreements, contracts, or lease terms and conditions. These responsibilities are recognized in 30 CFR 750.6(b)(1) and 750.6(b)(2).

The content of proposed § 750.6(b)(3) has been adopted in two sections, §§ 750.6(b)(3) and (b)(4). Section 750.6(b)(3) provides that BLM is responsible for administering mining contract, lease or mineral agreement terms and conditions, as provided for in 25 CFR Chapter I or in specific Indian mineral agreements; § 750.6(b)(4) states

that BLM is responsible for administering and conducting inspections and enforcement of terms and conditions of contracts, leases, or mineral agreements for coal mining operations, including production verification and inspection of operations for that purpose. In making these changes, OSM has incorporated the suggestions of a commenter who stated that the proposed phrase "if allowed" produced confusion about BLM's enforcement responsibilities. To achieve greater clarity, OSM adopted the commenter's suggested language.

Section 750.6(c). Final § 750.6(c) is identical to the language contained in the proposed rulemaking. It provides that MMS is responsible for collecting and accounting for royalties and other income on Indian mineral agreements except for annual rentals.

Two commenters requested that copies of all payments and other records be sent to the tribes at the same time they are submitted to the MMS under § 750.6(c). Interested individuals may contact their respective district offices of MMS to obtain copies of royalty payments and other records requested. OSM neither collects nor maintains this information.

Section 750.6(d). Section 750.6(d) outlines the principal responsibilities of BIA regarding the regulation of surface coal mining operations on Indian lands. Final §§ 750.6(d)(1), 750.6(d)(2), and 750.6(d)(3) of the final rules set forth BIA's responsibility as the lead agency within the Interior Department to consult with the tribes.

Final § 750.6(d)(1) provides that BIA is responsible for consulting directly with and providing representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands.

Final § 750.6(d)(2) provides that after consultation with the affected tribe, BIA is responsible for reviewing and making recommendations to OSM concerning permit applications, renewals, revisions or transfers of permits, sales or assignments of permits, permit rights or performance bonds.

Final § 750.6(d)(3) provides that after consultation with the affected tribe, BIA is responsible for reviewing mining plans and making recommendations to the BLM pursuant to 25 CFR 216.7.

OSM has added language to both (d)(2) and (d)(3) clarifying that OSM expects recommendations from BIA only after BIA has consulted with the affected tribes. The language is intended to ensure that affected tribes have an opportunity to participate in the process.

A commenter asserted that the proposed rules relegated BIA to an advisory role with no decisionmaking authority. However, the Act does not give BIA decisionmaking authority with respect to surface coal mining operations on Indian lands. BIA remains responsible for the Federal-Indian Trust obligations and for representing the tribes after consulting with them. In addition, tribes also continue to have the opportunity to consult with any agency on an informal basis.

A commenter stated that the proposed role of BIA of representing the tribes in matters relating to surface coal mining and reclamation is too vague and must be clarified to allow for direct consultation with tribal governments.

OSM agrees that the role of BIA can be further clarified and accordingly has changed § 750.6(d)(1) from the proposed phrase "assisting in the representation of" to the final language "consulting directly with and providing representation of."

A commenter questioned whether BIA has adequate technical staff to make the proper evaluations needed under § 750.6(d). The commenter suggested that some tribes might be better staffed to make these evaluations and recommendations to OSM. Two commenters recommended the delegation of the responsibilities outlined under § 750.6(d) to the tribes under cooperative agreements.

The Secretary lacks the authority to transfer the responsibilities listed under § 750.6(d) to the tribes at this time. The Federal-Indian Trust responsibilities for land use decisions and other matters relating to surface coal mining and reclamation operations on Indian lands remain with BIA. OSM agrees that tribal staffs are gaining expertise that will better enable them to participate in the evaluations required by § 750.6(d). All recommendations and comments of the affected tribes will be considered during review of permit applications.

Section 750.10 Information collection. OSM received no comments on this section.

Section 750.11 Permits. Section 750.11 sets out the permit requirements for conducting surface coal mining operations on Indian lands.

Section 750.11(a) provides that no person may conduct surface coal mining operations on Indian lands after eight months following the effective date of the Federal program for Indian lands in Subchapter E unless that person has first obtained a permit under Part 750. The permitting requirements implement a permitting requirement on Indian lands comparable to those implemented

on Federal lands and on lands within a State.

Under final § 750.11(b), all persons conducting surface coal mining and reclamation operations on Indian lands are required to comply with terms of the permit, the requirements of Subchapter E, and the Act.

One commenter stated that the inclusion of mineral agreements, leases and licenses in proposed § 750.11(b) should not be covered in these regulations since these are covered by other acts and regulations, and that therefore OSM has no justification for including them here.

OSM accepts the commenter's suggestion and has not adopted the terms "mineral agreements, leases, and licenses" in final § 750.11(b). OSM does not intend to assume any enforcement responsibilities for requirements of mining contracts, leases, or mineral agreements that are authorized and enforced exclusively under other statutes.

Final § 750.11(c) authorizes existing operations to continue to operate beyond eight months from this date if (1) a permit application is filed with OSM within two months; (2) OSM has not yet rendered an initial administrative decision approving or disapproving the application; and (3) the operations are conducted in accordance with applicable standards.

One commenter suggested adding a new section to § 750.11 which would provide for cooperative review of applications for proposed operations that contain both Indian lands and non-Indian lands. The commenter maintained that the new section is needed to ensure that any resulting dual permit reviews are as similar and concurrent as possible.

In response to the comment, OSM has included a new paragraph (d) in the final rules which provides for a cooperative review of permit applications whenever proposed surface coal mining operations will encompass both Indian lands and non-Indian lands. If the non-Indian lands are subject to the jurisdiction of a State regulatory authority, OSM expects that this joint effort with the State will substantially reduce potential dual permitting burdens on applicants. In every case OSM will make an independent decision whether to issue a permit for the Indian lands.

A commenter stated that the proposed regulations give no recognition or validity to permits for operations on Indian lands previously issued by OSM under the Act. The commenter believed that OSM should recognize valid permits and require no further

permitting for the duration of the permit's term.

All operations on Indian lands will have to obtain a permit pursuant to § 750.11. Although some existing surface coal mining and reclamation operations on Indian lands were reviewed under standards similar to those in OSM's permanent regulatory program, it is not clear that any were approved using precisely those standards. OSM will evaluate each application on an individual basis. At a minimum, an operator currently mining coal will have to submit an application for this evaluation. OSM will then determine whether the existing approval was based upon standards equivalent to those of the Federal Program for Indian lands and determine the extent to which additional materials and proceedings are necessary.

Two commenters suggested that the second "after" be deleted from proposed § 750.11(a) as unnecessary. OSM concurs that the proposed language may have been confusing and has changed § 750.11(a) from "after eight months after" to "after eight months following."

Section 750.12 Permit Applications. Section 750.12 specifies the requirements for applications for permits, permit revisions, and permit renewals for surface coal mining operations on Indian lands.

One commenter suggested the deletion of proposed § 750.12 in its entirety because the Secretary lacks authority to issue regulations beyond the scope of section 710 of the Act; the permitting requirements would expose operators on Indian lands to duplicative permitting and mining plan approval requirements which could render operations on Indian lands non-competitive; and the incorporation by reference of regulations being developed or subject to litigation without analysis or discussion for Indian lands makes meaningful comment impossible.

As discussed earlier, OSM has ample authority under the Act to promulgate these rules. Although there may be some overlap, the permitting requirement and mining plan approval requirements have separate statutory bases which must be satisfied. Hopefully, duplicative submissions can be minimized. If a permit applicant addresses all the requirements of 30 CFR Chapter VII, Subchapter G, many of the mining plan approval requirements of 25 CFR 216.7 can also be met using the same information. The mining plan requires approval from the BLM which will determine the sufficiency of the information provided.

The public has had an opportunity to provide comments on all regulations

applicable to surface coal mining and reclamation operations on Indian lands. All of the rules cross-referenced were adopted in final form prior to the publication of the proposed Indian Lands Program. The bases and purposes for the regulations which are incorporated by reference in the Federal program on Indian lands are set forth by OSM in preambles to those regulations. Although such regulations may at any time be subject to change, the public will be given the opportunity to comment on the effects of future changes.

Section 750.12(a). Under § 750.12(a), each application must be accompanied by a fee. OSM is currently drafting a proposed rule on permit fees that will apply to Indian lands and to all other areas where OSM is the regulatory authority, including Federal Program States and Federal lands. Until the other rule is proposed and adopted, § 750.12(a) will provide the authority for the collection of permit fees.

Two commenters questioned how the permit application fee is to be calculated. The commenters asserted that it is difficult to comment constructively on the proposed rule unless the calculation factors are known. Another commenter stated that placing a fee on coal mine operators on Indian lands would lessen his competitive position since similar fees are not presently being required for State and for Federal applications. The commenter recommended the permit fee rule not be adopted unless similar provisions are included for State programs, Federal lands, and Federal programs for States.

As noted above, permit fee regulations are currently under development by OSM. The regulations for permit fees, when proposed, will apply to Indian lands, and to all other lands for which OSM is the regulatory authority. An opportunity for comment on the proposed rules will be provided. OSM does not intend to collect permit fees for Indian lands until OSM promulgates the new rules. The issue of whether fees should be collected for permit application review performed prior to the promulgation of the permit fee rule will be addressed in that rulemaking. Final § 750.12(a) differs from the proposal in order to recognize that OSM's proposed permit fee rule may include either amounts or methods of calculating permit fees.

One commenter recommended that the permit fee also cover costs of tribal involvement in the permit review process, including funds for tribes to conduct their own cultural resource and socio-economic impact investigations.

The question raised by the commenter is more appropriately addressed in the pending permit fees regulation. That rule will identify and solicit comments on which costs should be recovered through the permit fee.

Two commenters argued that the fee requirements in proposed § 750.12(a) go beyond the authorization of section 507(a) of the Act. The commenters stated that fees for revisions and renewals of permit applications are unauthorized.

OSM disagrees. The intent of section 507(a) of the Act is to collect a fee for processing applications. Revisions and renewal are types of applications imposing processing costs. The authority for collecting such fees will be further addressed when OSM promulgates rules for the collection of permit fees.

Section 750.12(b). Under § 750.12(b), unless OSM specifies otherwise, no less than seven copies of the application are required. The final rule differs from the proposal in clarifying that the application is to be filed with OSM; the proposal said only "with the regulatory authority." Operators who seek authorization to conduct operations on Indian lands should contact OSM in advance to determine the number of copies to file.

Two commenters requested that tribes be specified as recipients of copies of the permit application under § 750.12(b). One commenter requested that the tribes receive three copies of the application.

OSM, as the regulatory authority, is responsible for the receipt and distribution of all copies of the application and will provide the affected tribes, BIA, and other agencies with responsibilities for Indian lands with copies of the application. OSM has modified § 750.12(b) to show this.

Section 750.12(c). Section 750.12(c)(1) makes most of the substantive permitting requirements of 30 CFR Chapter VII, Subchapter G applicable on Indian lands.

Section 750.12(c)(2) identifies provisions of the permit processing rules that are inapplicable on Indian lands. The final rule uses section numbers redesignated as a result of the revision to the permitting rules (48 FR 44344, September 28, 1983). The specific permitting provisions of Subchapter G that are inapplicable on Indian lands include Part 772 and §§ 773.11, 773.15(c)(3), 777.17, 778.16 (a) and (b), 785.11, and 785.12.

Part 772 pertains to coal exploration, which OSM does not regulate on Indian lands. Section 773.11 contains the general requirement to obtain a permit

for lands within a State. Its counterpart in the Indian lands program is § 750.11.

The rules do not require OSM to make the permit finding of § 773.15(c)(3) or the permit application to contain information supporting the finding (as required by §§ 778.16 (a) and (b)) that the area is not within an area designated, or under study or petition for designation as unsuitable for surface mining. These are inapplicable to Indian lands because the Act contains no provisions for either unsuitability petitions or planning processes for unsuitability on Indian lands.

Section 777.17, pertaining to permit fees is unnecessary in view of § 750.12(a). Likewise, §§ 785.11 and 785.12 relate to special situations in Pennsylvania and Wyoming that are not relevant to mining on Indian lands.

Section 750.12(c)(3) implements two special permit processing provisions applicable on Indian lands. First, when permits on Indian lands are proposed to be transferred, sold or assigned, § 511(b) of the Act requires the regulatory authority to approve the sale or assignment of permit rights.

The second special provision specifies the procedures to be followed for revisions of permits and provide guidance for the determination of whether a proposed permit revision is significant. Final § 750.12(c)(3)(ii)(A) requires applications for revisions to contain the same information on the proposed revised operation as if it had been proposed as part of the initial, already permitted operation. Because revisions differ widely, it is not possible to specify precisely the information needed for each permit, and there is no need to limit the required information to that in the operation and reclamation plan.

Among the factors OSM will examine in determining the significance of a revision are: (1) Changes in production or recoverability of the coal; (2) environmental effects; (3) public interest in the operation or change; and (4) possible adverse impacts upon fish or wildlife, endangered species, bald or golden eagles or cultural resources. Minor editorial changes have been made from the proposal in final § 750.12(c)(3)(ii)(B).

A commenter suggested adding previous §§ 770.12 and 776.12 to proposed § 750.12(c)(1). Previous § 770.12 is incorporated as revised in § 773.12. However, previous § 776.12 (now § 772.12), setting forth approval requirements for coal exploration removing more than 250 tons, is inapplicable on Indian lands. Coal exploration on Indian lands is BLM's responsibility.

One commenter asked if the proposed § 750.12(c)(1) is in conflict with 25 CFR 216.6. OSM finds no conflict because 25 CFR 216.6 sets forth requirements for approval of exploration plans, a responsibility that is retained by the BLM.

Section 750.12(d). Section 750.12(d) requires additional information in permit applications for mining on Indian lands to allow the Department to fulfill statutory obligations under other Federal laws. The requirements are comparable to those required for mining plans or permit applications for Federal lands. See the discussion of "permit application packages" in the Federal Register preamble to the Federal lands rules, 48 FR 6912 (February 16, 1983). OSM includes information required for compliance with the American Indian Religious Freedom Act in subparagraph (v).

One commenter asserted that proposed § 750.12 relates to operator compliance with Federal and State laws, specifically air quality regulations and other environmental regulations, but fails to recognize tribal regulations. The commenter is concerned that this could preclude or even eliminate current and proposed programs designed to establish tribal environmental regulatory programs.

The purpose of § 750.12(d) is to ensure that the permit application package contains enough information for OSM to determine that the proposed operation will be in compliance with applicable Federal law. It is not intended to preclude the separate applicability of authorized tribal rules.

A provision has been included as § 750.18(e) to make explicit that 30 CFR Chapter VII does not replace or supersede any remedy of the Indian mineral owner or other Indian owner that is set forth in the contract or otherwise available at law. This provision emphasizes that the Federal Program for Indian lands is not intended to interfere with existing rights of Indians. It is carried over from previous 25 CFR 210.113(h).

A commenter requested that a clause be inserted in § 750.12(c)(3)(i) to give tribes the first right of refusal to purchase the operator's interest in case of assignment. OSM disagrees. The regulations in 30 CFR Part 750 are not a means for assigning rights of a permit to a tribe; the Act fails to provide such authority.

One commenter believed that 30 CFR Chapter VII Subchapters G, K, L and M do not provide to tribal governments substantive roles which are equal to that afforded to State and local governments. The commenter identified fifty-eight

provisions in the rules in which tribal governments may be accorded a role, and incorporating the terms "tribe, tribal, or tribal government," whenever appropriate.

The commenter pointed out that tribal environmental codes are already governed by 25 CFR Part 216 and should be preserved.

In response to the commenter's suggestion, OSM has added a provision under the special requirements for permits at § 750.12(c)(3)(iii) to require notification of and consultation with tribal governments to the same extent as State and local governments. This provision reflects the role of tribal governments in the permit application process.

A commenter suggested that OSM solicit the affected tribes' input when reviewing revisions of mining and reclamation plans under § 750.12(c)(3)(ii)(B). Tribes will be notified and given the opportunity to comment on significant permit revisions. Under § 750.12(c)(3)(iii), tribes will be notified and given the opportunity to consult with OSM in the same manner and to the same extent as State and local governments.

The U.S. Fish and Wildlife Service (FWS) requested assurance that it could review and provide input into permit application review on Indian lands. The commenter also suggested that OSM and BLM jointly develop permit conditions to ensure protection of fish and wildlife values.

The U.S. Fish and Wildlife Service will have adequate opportunity to provide input into permit application review and ensure protection under the cross-referenced regulations, such as 30 CFR 773.12, 773.13 and 816.97. If needed and requested by the U.S. Fish and Wildlife Service, special conditions for protection of fish and wildlife values can be added under the existing regulations.

The FWS also expressed concern that by superseding 25 CFR 216.104(3), 216.108, and 216.110, the proposed rules weaken fish and wildlife protection measures. The commenter recommended the inclusion of a clear and more positive rule which would ensure that fish and wildlife protection measures are incorporated in the Federal Program.

All fish and wildlife protection requirements of the permanent regulatory program are now applicable to Indian lands by cross-referencing. Requirements such as §§ 773.12, 773.13, 773.15(c)(10), and 816.97 have been incorporated for Indian lands and

provide the necessary level of protection for fish and wildlife values.

A commenter questioned the status of those portions of the regulations that are neither listed under § 750.12(c)(1) as applicable to Indian lands nor listed under § 750.12(c)(2) as inapplicable, such as § 770.1.

The intent of OSM in § 750.12(c)(1) is to list those requirements of Subchapter G that specifically apply to Indian lands and in paragraph (c)(2) to list those specific requirements that do not apply. Section 770.1 was removed from Subchapter G in the course of OSM's recent revision of the permanent program rules. Every remaining requirement of Subchapter G is encompassed by § 750.12 (c)(1) or (c)(2).

Two commenters recommended that § 778.15(b) be made applicable to Indian lands. OSM agrees with the commenter. Section 778.15(b) and the corresponding permit finding, § 773.15(c)(4), are made applicable to surface coal mining conducted on Indian lands because the mineral and surface estates on Indian lands may be held by different owners.

One commenter suggested adding a new paragraph to § 750.12(c) which would give an operator the option of processing his permit application under the rules referenced in paragraphs (c)(1) and (c)(3), or under equivalent rules applicable to adjacent lands.

OSM disagrees with the suggestion to allow an operator the option of selecting which regulatory program should apply to the review of the application. Although OSM generally agrees that equivalent standards should apply to similar environmental conditions within a geographic area, this may not be possible where different regulatory programs apply.

One commenter questioned the proposed listing of previous § 771.11 (since redesignated as § 773.11) as inapplicable to Indian lands since this section provided for the continuation of mining operations under an existing lease until such time as OSM approves the new application.

The continuation of operations under existing approvals for Indian lands is addressed by the requirements of § 750.11. Thus, OSM includes redesignated § 773.11 (successor to § 771.11) as inapplicable on Indian lands. Existing operations with approvals will be allowed to continue operating if the requirements of § 750.11(c) are met.

A commenter sought a provision to keep permitting information under § 750.12(c)(2) confidential and not of public record. Under § 773.13(d)(3), which is cross-referenced, OSM provides procedures to ensure

confidentiality of information as authorized by the Act. OSM expects to implement the confidentiality provisions of § 773.13 on a case-by-case basis.

A commenter was concerned that the proposed rules at § 750.12 do not include the same unsuitability criteria as exist under BLM's planning process for Federal lands. The commenter stated that, since there is a need to protect critical resources on Indian lands, the same protection should be provided for fish and wildlife resources on Indian lands as is provided on Federal lands.

The unsuitability criteria for leasing of Federal coal do not apply to Indian lands. OSM lacks the authority to extend these requirements to the permitting process for surface coal mining and reclamation operations on Indian lands. However, as mentioned previously, protection of the critical fish and wildlife resource values are ensured through cross-referencing of the applicable regulations to Indian lands. Also, before issuing a permit, OSM must find that reclamation can be accomplished, including the requirements of 30 CFR 816.97.

Several commenters objected to the exclusion of the American Indian Religious Freedom Act and other Federal laws protecting cultural resources on Indian lands. The commenters believed that OSM should determine whether sites of religious value would be adversely affected by the granting of a permit application. The commenter believes that § 780.31 is inadequate to ensure protection of cultural resources on Indian lands. One commenter suggested that a proposed operation must show compliance with all Federal laws, including compliance with 25 CFR Part 216, and tribal laws regarding resource protection.

OSM agrees with the commenters' contentions that cultural resources on Indian lands are protected under the American Indian Religious Freedom Act and other Federal laws. OSM has added as § 750.12(d)(2)(v) a requirement for documentation of compliance with such laws as part of the permit application package. Proposed §§ 750.12(d)(2) (v)-(viii) have been redesignated §§ 750.12(d)(2) (vi)-(ix) in the rule promulgated here today.

The FWS requested that proposed § 750.12(d)(2)(viii) require documentation of appropriate studies and progress of informal and formal consultation with the U.S. Fish and Wildlife Service. The requirement for coordination with the Endangered Species Act of 1973 is included by incorporation of §§ 773.12 and 816.97 (see above discussion). However, OSM

added language to § 750.12(d)(2)(ix) to require special studies if needed.

Finally the FWS stated that it is unclear whether a programmatic section 7 consultation under the Endangered Species Act will be initiated by OSM for the Indian lands program and whether the draft environmental assessment of these proposed rules addresses the endangered species issue.

Consultation under the Endangered Species Act will be initiated by OSM for each permit application on Indian lands, as required. These rules provide the same level of protection to threatened or endangered species as OSM's permanent program rules. Because the promulgation of these rules is in compliance with the Endangered Species Act, no formal consultation is necessary. Regarding the NEPA issue, an evaluation of coordination under the Endangered Species Act was included in the final environmental impact statement OSM-EIS-1 (OSM, 1979) and in the Final Environmental Impact Statement, OSM-EIS-1: Supplement (OSM, 1983) published in January 1983 for revision of the permanent program rules.

A commenter pointed out that States do not have jurisdiction to enforce compliance with the Clean Air Act on Indian lands as implied under proposed § 750.12(d)(2)(v). OSM agrees with the comment and final § 750.12(d)(2)(vi) (proposed § 750.12(d)(2)(v)) does not require data showing compliance with State laws.

Two commenters stated that the informational requirements of § 750.12(d)(2) should be eliminated as unnecessary, as unauthorized by the statute, and as appearing to go beyond the requirements of other permanent program applications. The commenters stated that OSM has failed to set forth authority for these requirements in the preamble, that it will be extremely difficult to gather this information within two months of the effective date of these rules, and finally that the accumulation of this information is a responsibility of OSM.

The authority and basis for OSM to require the information listed under § 750.12(d)(2) for operations on Indian lands is comparable to the requirements for mining on Federal lands. This discussion is provided in the Federal Register preamble to the Federal lands rules, 48 FR 6912 (February 16, 1983).

OSM recognizes the potential difficulty in providing all of the necessary information in two months' time. Submission of an application within two months will be sufficient to qualify an applicant to continue mining

until OSM makes a decision on the application. The application will have to be augmented if necessary to completely fulfill the regulatory requirements. If an applicant has made a good faith effort to provide all of the permit application information necessary for an existing operation, OSM will exercise reason in determining whether an operator may continue to operate under § 750.11(c).

One commenter suggested the modification of § 750.12(d)(1) to reflect that 30 CFR Part 211 has been redesignated as 43 CFR Part 3480, effective September 16, 1983. OSM agrees and makes the redesignation at § 750.12(d)(1).

Two commenters stated that Native American grave sites should be accorded as much protection as cemeteries under the regulations for unsuitability.

Section 522(e) of the Act is specific with regard to protection of cemeteries. Under OSM's revised definition in 30 CFR 761.5, 48 FR 41348 (September 14, 1983), a cemetery includes any land where human bodies are interred, except private family burial grounds. Whether Native American grave sites qualify depends upon specific facts. However, through the consultation process which includes OSM, BIA, and the tribes, and during development of the cultural resources protection plan required by § 750.12(d)(2)(iv), Native American grave sites not qualifying under the definition of a cemetery may be identified and afforded protection as recommended by the tribe and BIA. Also, under the requirements of § 773.15(c)(11), OSM must make a finding that proposed operations will not adversely affect a private family burial ground.

One commenter suggested that provisions be made to include the interim unsuitability criteria developed between the Navajo and BIA for proposed coal, gas, and oil leases on the Navajo area. OSM does not consider the suggested criteria to be applicable to these rules; as discussed above, they are more appropriate to the leasing process.

A commenter stated that the proposed incorporation of previous Part 786, adopted in final form in Part 773, reinforces the appearance that tribes have been entirely excluded by the regulations from any responsible role in the permitting process. The commenter further argued that tribes have extensive jurisdiction to regulate the activities of non-Indians, with only certain exceptions. The commenter reasoned that there is no legal impediment to tribal participation in the permitting and regulatory program under the Act and

stated his inability to understand omission of such participation.

OSM disagrees. The tribes have not been excluded from the permitting process. To the contrary, their extensive role is described above. However, until such time as Congress enacts legislation to allow tribes to assume the role of a regulatory authority, and regardless of the extensive jurisdiction of the tribes to regulate other activities of non-Indians, tribes lack authority under the Surface Mining Act to regulate surface coal mining and reclamation operations on Indian lands. The Secretary concludes that these rules give tribes as much voice in the permitting process as is possible under the Act.

A commenter requested that previous Part 786 (redesignated as Part 773 and cross-referenced in § 750.12(c)) include native language requirements for notices, conferences, and hearings, and for copies of permit applications to be made available at places on Indian lands designated by the tribe.

OSM has not accepted this request. No requirement exists in the Act for posting notices in the native language. However, OSM will work with BIA to assure tribal involvement. Under § 773.13, a copy of the complete permit application is made available for public inspection. This location usually is the nearest county seat or other governmental office that is open to the public within the vicinity of the mine. OSM will consult with the tribe to determine where the application is to be filed. In addition, copies of the application are provided to the tribe and local BIA offices.

A commenter requested that under previous Part 786 permit approval should be conditioned on whether all lease terms and tribal laws have been met and should give due consideration to tribal recommendations. The BIA is responsible for reviewing the application and providing BLM with recommendations on approval or disapproval of the mining plan, which will include a review to determine if lease terms and tribal laws have been met. BIA recommendations are also given to OSM on the permit application. In addition, OSM will give full consideration to tribal recommendations during the review process.

A commenter requested that previous § 786.25 specify that nothing in the regulations may be construed as enlarging any rights or diminishing any duties established under tribal leases or tribal laws, and that previous § 786.25(c) provide for permit suspension for violation of lease terms or tribal laws.

The Indian Lands Program does not diminish any tribal rights. In addition,

§ 773.17, requires the permittee to comply with the terms and conditions of the approved permit. Tribes and the BIA have the opportunity to recommend inclusion in the permit of any lease terms and conditions which are not inconsistent with the Act. Violations of any permit conditions are subject to Federal enforcement under Part 843. In addition, the BIA is primarily responsible for the monitoring of lease terms.

A commenter requested that a right of entry for authorized tribal representatives should be specified in previous § 786.27. Right of entry under § 773.17 is allowed for the "authorized representative of the Secretary" on Indian lands. However, under § 773.18(d)(2) the authorized representative may be accompanied by private persons in accordance with Part 842. Representation for tribes during inspections is also provided for under § 750.18(d).

A commenter requested that previous Part 787 should specify that the tribe may participate as a party in administrative review proceedings (for review of permit decisions) through intervention as a matter of right.

Part 775 is the successor to Part 787, and is cross-referenced in § 750.12(c)(1). In accordance with § 775.11, any person with an interest which is or may be adversely affected by a decision on a permit may request an administrative hearing. The tribe clearly has such an interest and would therefore have the right to (1) request an administrative review hearing, (2) be notified and given the opportunity to be heard at administrative hearings, and (3) appeal for judicial review of the decision under § 775.13.

A commenter requested that formal tribal consultation be provided for during the review process of outstanding permits, permit renewals, and transfer, assignment or sale of permit rights under previous § 788. The commenter added that permit revisions should include formal tribal consultation as well as greater protection of cultural resource values. Tribes may be involved to the extent authorized by the Act. OSM previously discussed the role of tribal involvement in the permit review process at § 750.6 of the preamble, above.

A commenter recommended that it be the right of the tribal government to enter into contractual agreements which remove the Department of the Interior from the direct administration of programs on the reservations and that language be included to preserve and allow for tribal governments to request

and receive such contracts under the legal authority of Pub. L. 93-638, specifically § 102. The commenter stated that inclusion of these rights is mandatory, and the ability to exercise the right must be explicit.

Neither the Act nor these rules authorize tribes to regulate surface coal mining operations on Indian lands. For the present, that is OSM's responsibility. Such authority may result if Congress amends the Act. On the other hand, these rules do not affect or diminish rights of tribes under other laws.

Section 750.13 Small Operator Assistance. This section implements the small operator assistance program contained in 30 CFR Part 795 as applicable on Indian lands. See 48 FR 2266 (January 18, 1983). OSM received no comments on this section.

Section 750.14 Lands designated unsuitable for mining by Act of Congress. Because section 522(e) of the Act generally prohibits mining in specified areas designated by Congress, those prohibitions are applicable on Indian lands. Thus, § 750.14 makes 30 CFR Part 761, which implements section 522(e) of the Act, applicable on Indian lands. In addition, the Secretary in the exercise of his discretionary powers, may decline to approve minerals agreements in areas which are unsuitable for mining.

One commenter recommended that OSM reconsider its interpretation of the Act regarding the applicability of section 522 on Indian lands. The commenter reasoned that Congress intended that, unless specifically prohibited, all provisions of the Act are to apply to all lands underlain by coal.

OSM disagrees with the commenter's interpretation of the intent of Congress regarding the application of section 522 of the Act to Indian lands. The Act contains no provisions for either unsuitability petitions or planning processes for unsuitability on Indian lands. Tribal governments, in cooperation with the Department, can decline to lease lands which they determine are unsuitable for mining.

One commenter stated that tribes should be allowed to establish their own processes and develop their own criteria for making unsuitability designations. The tribe could then make decisions on the classes of individuals, i.e. members, non-members, or resident-members, who can file petitions of unsuitability.

OSM has rejected this comment. As previously discussed, the Act does not provide such authority.

Another commenter suggested that proposed § 750.14 not be adopted because the Secretary lacks authority to promulgate regulations under section

522 of the Act on Indian lands. OSM disagrees because section 522(e) applies to all surface coal mining operations.

Section 750.15 Coal exploration. Section 710 of the Act excludes compliance with section 512 of the Act, concerning coal exploration operations. Accordingly, OSM provides in § 750.15 that coal exploration on Indian lands is governed by 25 CFR Part 216 or 43 CFR Part 3480, whichever is applicable.

A commenter suggested that, to be consistent, the cross-reference in § 750.15 should include a reference to 43 CFR Part 3480, where applicable. OSM concurs and incorporates the suggested change in § 750.15.

A commenter suggested that all data relating to exploration such as plans, drill logs, geophysical and geological interpretation of data, etc., should also be filed with the tribe under § 750.15.

OSM has not accepted this comment. No requirement to transfer the listed information is authorized by the Act.

Section 750.16 Performance Standards. OSM cross-references for Indian lands the applicable permanent program performance standards in 30 CFR Chapter VII, Subchapter K. The final rule cross-references nearly all of the performance standards of the permanent program, which includes Parts 816, 817, 819, 822, 823, 824, 827 and 828. These provisions apply to all new operations and to existing operations after OSM makes an initial administrative decision on a permit application. Prior to that decision, the performance standards in 25 CFR Part 216, Subpart B continue to apply. The proposed cross-reference to Part 826 has not been adopted because that part has been removed from the permanent program rules.

A commenter suggested that the words "or the equivalent rules applicable to adjacent lands under an approved program or a Federal-State cooperative agreement" be added to the end of proposed § 750.16. The commenter stated that regulations are to take into account the "diversity in terrain, climate, biology, chemical and other physical conditions * * *" within a regional area as well as to implement national standards. The commenter argued that approved program standards should be allowed to apply to Indian lands in the same area.

The comment implied that approved State programs could be applied to operations on Indian lands. OSM cannot apply State program standards to Indian lands. However, OSM will consider local environmental factors within a given geographical area in its permitting decisions. OSM does not anticipate the application of technical standards to

operations on Indian lands significantly different from those applied on non-Indian lands in similar areas.

One commenter contended that rules implementing section 515(b)(1) of the Act should be deleted because maximum economic recovery is a requirement of the Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1085), not the Surface Mining Control and Reclamation Act, and has no bearing on Indian lands.

OSM disagrees with the position of the commenter. Section 710(d) of the Act expressly incorporates the requirements of section 515, including section 515(b)(1) which pertains to the maximum recovery of the solid fuel resource in a manner that minimizes re-affecting the land.

Section 750.17 Bonding. OSM cross-references all of the permanent program bonding regulations, contained in 30 CFR Chapter VII, Subchapter J, to make them applicable on Indian lands. The bonding regulations set out requirements for the types, duration and amounts of bonds, conditions of bonds, and procedures and criteria for bond forfeiture or release. OSM, as the regulatory authority, will issue, adjust and release bonds.

Section 750.18 Inspection and enforcement. Under § 750.18(a), inspection and enforcement must be conducted in accordance with 30 CFR Parts 842, 843 and 845, which comprise the requirements for inspection and enforcement under the permanent regulatory program. In addition, a reference to 43 CFR Part 4 is included to clarify that administrative reviews and appeals are governed by the rules of the Department's Office of Hearings and Appeals.

Final § 750.18(b) requires OSM to furnish copies of notices and orders to mineral or surface owners on whose land a surface coal mining operation is conducted. It also allows OSM to furnish copies to others with an interest in the operation or the permit area. The final rule does not require OSM to furnish notices regarding exploration on Indian lands, as was proposed, because the regulation of exploration activities on Indian lands is a BLM responsibility.

Four commenters pointed out that tribal participation and consultation is necessary with respect to inspections as specified in 25 CFR 216.112(e)(1); proposed § 750.18(b) stated that tribal representatives would be invited to accompany Federal inspectors "if time and circumstances permit."

OSM concurs with the comments. Under previous 25 CFR 216.112(e)(1) the effected tribes had to be notified and

involved in the inspection and enforcement operations of surface coal mining operations on Indian lands. OSM incorporates language similar to that contained in previous 25 CFR 216.112(e) into the final rule. Thus, final § 750.18(d) requires that tribal representatives be invited to participate in all inspections on Indian lands.

One commenter contended that 25 CFR 216.112(e)(1) and 216.114(k) are not necessarily Indian rights protection provisions as was stated in the proposal, and should not be included in a final rule. OSM disagrees with the commenter's position and, as proposed, has incorporated the provisions in Part 750.

BLM recommended that the following phrasing be added to § 750.18(c): "and pursuant to 25 CFR 216.7 and 43 CFR 3480, where applicable, to any mineral owner or surface owner, or to any person having an interest in the coal mining operation." OSM has accepted the recommendation and modified § 750.18(c) accordingly in the final rule.

One commenter expressed concern about whether Part 843 clearly refers to 43 CFR Part 4. To resolve this concern and as noted above, the final rule includes a reference to 43 CFR Part 4.

Section 750.19 Blaster Certification. OSM has amended final § 750.19 to recognize that blasters certified in accordance with a Federally-administered blaster certification program may conduct blasting on Indian lands. OSM expects to promulgate such a program soon. During the interim, the standards found in 30 CFR 816.61(c) and 817.61(c) are applicable.

One commenter recommends that because of differences among the cultural, religious, socio-economic, and environmental interests that must be protected, a separate Indian lands blaster certification program should be included in this section.

OSM disagrees. OSM is now in the process of promulgating rules which will establish an OSM-administered blaster certification program for Federal Programs, including Indian lands. OSM believes that that program will be adequate to ensure the protection of the interests cited by the commenter.

Section 750.20 Adoption of Indian coal lease terms. Section 750.20 requires the Secretary to incorporate certain terms and conditions in leases of coal on Indian lands. Section 710(d) of the Act requires the Secretary to incorporate into all existing and new leases the requirements cited in that section as applicable to mining on Indian lands. Final § 750.20(a) requires that all new leases and lease renewals incorporate the cited provisions.

Section 750.20(b) requires the Secretary to include and enforce terms requested by the tribes into leases issued after August 3, 1977. This provision is required by section 710(e) of the Oct. Coal-owning tribes are required to make any such request in writing to OSM. Final § 750.20(b) differs slightly in phrasing from the proposal; no change in substance is intended.

Two commenters suggested the deletion of proposed § 750.20 in its entirety. The commenters reasoned that since the proposed regulation purports to unilaterally amend negotiated contracts having more than one party the regulation is not legally defensible. The commenters stated that (1) Congress charged the Secretary to incorporate certain requirements of the Act into existing and new leases and (2) Congress could only have intended that the specified provisions be incorporated into leases in a legally permissible manner (e.g., as part of a negotiated lease amendment, or upon lease renewal, or as a part of a lease amendment or upon lease renewal or as a part of a lease requirement) and not by administrative fiat. The commenters urged OSM to restrict its rulemaking to section 710 (c) and (d) and argued that it is inappropriate for OSM to incorporate terms and conditions other than those specified.

OSM disagrees. Congress passed the Act to protect valuable natural resources. OSM is obliged to comply with the Congressional mandate to incorporate the requirements of section 710(d) into new and existing Indian coal leases.

Two commenters asked how the Secretary proposes to incorporate the requirements of section 710(d) into new and existing Indian coal leases. Sections 750.20 (a) and (b) are the means for incorporating applicable requirements of Indian coal lease terms. Additionally, the rules impose the same requirements through the permit issued to each operator.

One commenter contended that § 750.20(b) should specify that the lease terms and conditions which must be requested by tribes are in addition to those guaranteed by law and covered by subsection (a). OSM agrees that the wording in proposed § 750.20(b) needed clarification and has amended the language to include the word "also."

Part 755—Tribal-Federal Intergovernmental Agreements

Part 755 provides for the development, approval, and administration of Tribal-Federal Intergovernmental Agreements. This part provides for cooperative agreements between OSM and Indian

tribes under which OSM can provide technical and financial assistance to allow for the training of Indian tribes and/or tribal members. This training would be in anticipation of tribal participation as a regulatory authority. Authority for cooperative agreements is found in the Surface Mining Act. The final rule is amended to clarify that funding provisions are provided for all items listed under § 755.12.

Two commenters raised questions about what types of activities would be funded pursuant to § 755.12. OSM provides support to fund tribal employee training; to work with OSM in the review of permit applications and to recommend appropriate action on permits, permit applications, inspection and enforcement, bond release or forfeiture; and to attend and testify at hearings.

Several commenters contended that the proposed provisions for Tribal-Federal Intergovernmental Agreements provided funding only to attend and testify at Federal hearings.

OSM did not intend to create the impression that funding for Tribal-Federal Intergovernmental Agreements is limited only to attending and testifying at Federal hearings. OSM has revised § 755.12 to show that funding may cover other functions under the Agreement. Of course, specific funding for any agreement is subject to availability of appropriations.

Two commenters contended that Part 755 allows tribes to request a cooperative agreement under which the tribe may only "work with" OSM on regulatory functions, which is not enough. The commenters stated that a commitment should be made to enter into cooperative agreements with tribes which will ensure meaningful and formal tribal participation in the regulatory process.

OSM rejects the commenters' statement that tribes will not have an opportunity to have meaningful involvement in the regulatory process. OSM designed the Tribal-Federal Intergovernmental Agreements to allow the maximum tribal participation possible until such time as Congress enacts legislation to allow tribes to assume primacy over the regulation of surface mining on Indian lands. Three coal-producing tribes (Crow, Hopi, and Navajo) have cooperative agreements which afford each tribe the opportunity to have a training program for tribal employees. OSM expects future agreements under Part 755 to function similarly to these existing agreements.

Four commenters contended that section 755, Tribal-Federal

Intergovernmental Agreements, lacks a statutory basis under the Act.

Section 710(c) of the Act shows the intent of Congress that Indian tribes be able to become regulatory authorities as soon as legislation is enacted by Congress. Thus, a tribal program to train Indian employees to assume the role of regulatory authorities at some time in the future is within the Secretary's authority. It should be emphasized that agreements under Part 755 cannot and will not transfer OSM's nondelegable responsibilities to the tribes.

One commenter recommended that the tribes have concurrence authority on all agreements and that tribal authorities should have a direct and supportive activity in all monitoring, inspecting and enforcement of laws, codes, and regulations on Indian lands.

OSM declines to accept the commenter's recommendation. Tribal-Federal Intergovernmental Agreements are not intended to authorize primacy for Indian tribes. They instead only provide training for tribal employees until Congress enacts legislation giving the tribe authority to seek primacy. OSM has no authority at this time to implement the commenter's suggestion.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) concludes that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under Pub. L. 96-354.

The reasons underlying these determinations are as follows: The Indian Lands Program will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor will it increase costs of prices for consumers, individual industries, Federal, State, tribal or local governmental agencies or geographic regions. There will be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs, or aggregate effects on small entities.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on these rules and has made a finding that they will not significantly affect the quality of the

human environment. The EA and finding of no significant impact are available in OSM's Administrative Record in Room 5124, 1100 L Street, NW., Washington, D.C.

Paperwork Reduction Act of 1980

Section 750.10 codifies OSM's conclusion that the information collection requirements contained in Part 750 and the remainder of these rules do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are expected to be less than ten respondents annually.

Effective Date

The final rule is effective September 28, 1984. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule immediately effective because OSM needs to begin the processing of permit applications for new and existing operations, including those which seek to enter new areas on Indian lands in the near future. Because (1) 25 CFR Part 216, Subpart B will continue to apply to existing operations until they receive a new permit and (2) existing operations will be able to continue to operate for eight months and beyond that time if a permit application is filed within two months, no person will be adversely affected by the immediate applicability of 30 CFR Parts 750 and 755.

List of Subjects

25 CFR Part 216

Environmental protection, Indian lands, Mineral resources, Mines.

30 CFR Part 700

Administrative practices and procedure, Coal mining, Surface mining, Underground mining, Reporting and recordkeeping requirements.

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 710

Coal mining, Law enforcement, Public health, Safety, Surface mining, Underground mining.

30 CFR Part 750

Indian land mineral resources, Surface mining, Underground mining, Coal mining Reporting and recordkeeping requirements.

30 CFR Part 755

Intergovernmental relations reporting and recordkeeping requirements, Indian lands mineral resources.

Drafting Information

These regulations were drafted by Beverly M. M. Charles, Office of the Solicitor; Willis Gainer, Western Technical Center, Office of Surface Mining, Denver, Colorado; and Murray Newton, Branch of Regulatory Programs, Office of Surface Mining.

For the reasons stated, 25 CFR Part 216 and 30 CFR Parts 700, 701, 710, 750, and 755 are amended as set out herein.

Dated: August 8, 1984.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management

Dated: August 30, 1984.

Ken Smith,

Assistant Secretary, Indian Affairs.

25 CFR Part 216—SURFACE EXPLORATION, MINING, AND RECLAMATION OF LANDS

1. The authority for 25 CFR Part 216 reads as follows:

Authority: 34 Stat. 539, 35 Stat. 312; 25 U.S.C. 355 NT; 35 Stat. 781; 25 U.S.C. 396; Sec. 1, 49 Stat. 1250; 25 U.S.C. 473a; 49 Stat. 1967, 25 U.S.C. 501, 502; 52 Stat. 347, 25 U.S.C. 396a-f; 5 U.S.C. 301.

2. Section 216.100 is amended by revising paragraph (a) to read as follows:

§ 216.100 Applicability.

(a) The performance standards in this subpart shall apply to each coal mining operation on Indian lands on or after December 16, 1977, and shall remain applicable to each operation until OSM issues or denies a permit in accordance with 30 CFR Part 750.

§§ 216.112-216.114 (Removed)

3. Sections 216.112, 216.113 and 216.114 are removed.

PART 700—GENERAL

4. The authority for 30 CFR Part 700 reads as follows:

Authority: Secs. 102, 201, 304, 405, 407, 412, 501, 510, 512, 515, 516, 517, 520, 523, 527, 528, 529, 701, 708, 719 Pub. L. 95-87, 91 Stat. 448, 449, 454, 459, 462, 466, 467, 480, 483, 486, 495, 498, 503, 510, 513, 514, 515, 516, 521, 526 (30 U.S.C. 1202, 1211, 1224, 1235, 1237, 1242, 1251, 1260, 1262, 1265, 1266, 1267, 1270, 1273, 1277, 1278, 1279, 1291, 1298, 1309), unless otherwise noted.

5. 30 CFR 700.1 is amended by redesignating existing paragraphs (e)-

(m) as paragraphs (f)-(n) and adding a new paragraph (e) as follows:

§ 700.1 Scope.

(e) Subchapter E of this chapter contains regulations that apply to surface coal mining and reclamation operations conducted on Indian lands.

§ 700.11 [Amended]

6. 30 CFR 700.11 is amended by removing paragraph (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(5).

PART 701—PERMANENT REGULATORY PROGRAM

7. The authority for 30 CFR Part 701 reads as follows:

Authority: Secs. 102, 201, 501-529, 701, 702, 705, 708, 711, 713, 714, 715, 716, 717, 719, Pub. L. 95-87, 91 Stat. 448, 449, 467-515, 516, 519, 520, 521, 523, 524, 525, and 526 (30 U.S.C. 1202, 1211, 1251-1279, 1291, 1292, 1295, 1298, 1301, 1303, 1304, 1305, 1306, 1307, and 1309), unless otherwise noted.

8. Section 701.1 is amended by redesignating paragraphs (b)(3) through (b)(8) as (b)(4) through (b)(9) and by adding a new paragraph (b)(3) as follows:

§ 701.1 Scope.

(b) Subchapter E on surface coal mining and reclamation operations on Indian lands.

9. 30 CFR 701.3 is revised to read as follows:

§ 701.3 Authority.

The Secretary is required by section 501(b) of the Act to promulgate regulations which establish the permanent regulatory program; by section 523 of the Act to promulgate regulations which establish the Federal lands programs; and is authorized by section 710 of the Act to promulgate regulations which establish a Federal program for Indian lands.

10. 30 CFR 701.4 is amended by adding paragraph (h) to read as follows:

§ 701.4 Responsibility.

(h) The Secretary shall have the responsibility for the administration of the Federal program for Indian lands, as provided for under Subchapter E of this chapter. The Director and other Federal authorities have the responsibilities under the Indian lands program as are provided for under Subchapter E of this chapter.

11. 30 CFR 701.11 is amended by redesignating paragraphs (c) through (e) as (d) through (f) and adding a new paragraph (c) to read as follows:

§ 701.11 Applicability.

(c) Any person who conducts surface coal mining and reclamation operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to Part 750 of this chapter. However, a person who is authorized to conduct surface coal mining and reclamation operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

(1) An application for a permit to conduct those operations has been made to the Director within two months after the effective date of the Federal program for Indian lands and the initial administrative decision on that application has not been issued; and

(2) Those operations are conducted in compliance with all terms and conditions of the existing authorization to mine, the requirements of the Act, 25 CFR Part 216, and the requirements of all applicable mineral agreements, leases or licenses.

PART 710—INITIAL REGULATORY PROGRAM

12. The authority for 30 CFR Part 710 reads as follows:

Authority: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201), unless otherwise noted.

13. Section 710.11 is amended by revising paragraph (b) to read as follows:

§ 710.11 Applicability.

(b) *Operations on Indian lands.* Until OSM makes an initial administrative decision on a permit application under Part 750 of this chapter, a person conducting coal mining operations on Indian lands shall comply with the performance standards of this chapter insofar as they are incorporated in 25 CFR Part 216, Subpart B.

14. Subchapter E, consisting of Parts 750 and 755, is added to Title 30 as follows:

Subchapter E—Indian Lands Program

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

Sec.

- 750.1 Scope.
- 750.5 Definitions.
- 750.6 Responsibilities.
- 750.10 Information collection.
- 750.11 Permits.
- 750.12 Permit applications.
- 750.13 Small operator assistance.
- 750.14 Lands designated unsuitable for mining by Act of Congress.
- 750.15 Coal exploration.
- 750.16 Performance standards.
- 750.17 Bonding.
- 750.18 Inspection and enforcement.
- 750.19 Blaster certification.
- 750.20 Adoption of Indian coal lease terms.

Authority: 30 U.S.C. 1201-1328; 5 U.S.C. 301.

§ 750.1 Scope.

This subchapter provides for the regulation of surface coal mining and reclamation operations on Indian lands and constitutes the Federal program for Indian lands.

§ 750.5 Definitions.

For purposes of regulating surface coal mining operations on Indian lands, the following terms, when used in this subchapter or in parts referenced by this subchapter, have the following meanings:

BIA means the Bureau of Indian Affairs of the U.S. Department of the Interior.

BLM means the Bureau of Land Management of the U.S. Department of the Interior.

Federal program means the Federal program for Indian lands.

Indian mineral owner means (1) any individual Indian or Alaska native who owns land or mineral 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, or (2) any Indian tribe, band, native, pueblo, community, rancheria, colony, or other group which owns land or mineral interest 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. This definition does not include owners of lands patented to a village or regional corporation pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203.

Local government agencies means, in addition to county, city or township governments, Indian tribal governments.

Minerals agreement means any joint venture, operating, production sharing, service, managerial, lease or other agreements, or any amendment, supplement to or modification of such agreement, providing for the exploration for, or extraction, processing, or the development of coal, or providing for the sale or other disposition of the production or products of such coal resources.

MMS means the Minerals Management Service of the U.S. Department of the Interior.

Regulatory authority means the Office of Surface Mining.

§ 750.6 Responsibilities.

(a) OSM shall: (1) Be the regulatory authority on Indian lands;

(2) After consultation with the Bureau of Indian Affairs and, as applicable, with the Bureau of Land Management, conditionally approve, approve, or disapprove applications for permits, permit renewals, or permit revisions for surface coal mining operations on Indian lands, and applications for the transfer, sale or assignment of such permit rights on Indian lands;

(3) Conduct inspection and enforcement activities with respect to surface coal mining and reclamation operations on Indian lands;

(4) Consult with the BIA and the affected tribe with respect to special requirements relating to the protection of non-coal resources of the area affected by surface coal mining and reclamation operations, and assure operator compliance with such special requirements;

(5) Consult with the Bureau of Land Management concerning requirements relating to the development, production and recovery of mineral resources on Indian lands;

(6) Approve environmental protection performance bonds and liability insurance required for surface coal mining and reclamation operations on Indian lands but not the production royalty bond; and

(7) Ensure compliance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, with respect to permitting actions for surface coal mining and reclamation operations on Indian lands.

(b) The Bureau of Land Management is responsible for: (1) Receiving, reviewing, and conditionally approving, approving or disapproving coal exploration plans and mining plans, as provided in 25 CFR Chapter I or in specific Indian mineral agreements;

(2) Administering, and conducting inspection and enforcement for, coal exploration operations on Indian lands;

(3) Administering mining contract, lease or mineral agreement terms and conditions, as provided for in 25 CFR Chapter I or in specific Indian mineral agreements; and

(4) Administering and conducting inspections and enforcement of terms and conditions of contracts, leases or mineral agreements for coal mining operations, including production verification and inspection of operations for that purpose.

(c) The Minerals Management Service is responsible for collecting and accounting for royalties and other income from Indian mineral agreements except for annual rentals.

(d) The Bureau of Indian Affairs is responsible for: (1) Consulting directly with and providing representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands;

(2) After consultation with the affected tribe, reviewing and making recommendations to OSM concerning permit applications, renewals, revisions or transfers of permits, permit rights or performance bonds; and

(3) After consultation with the affected tribe, reviewing mining plans and making recommendations to the Bureau of Land Management pursuant to 25 CFR 216.7.

§ 750.10 Information collection.

The information collection requirements of this part do not require approval from the Office of Management and Budget under 44 U.S.C. 3507 because there are expected to be less than 10 respondents annually.

§ 750.11 Permits.

(a) No person shall conduct surface coal mining and reclamation operations on Indian lands after eight months following the effective date of this subchapter unless that person has first obtained a permit pursuant to this part.

(b) Any person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit, the requirements of this subchapter, and the Act.

(c) Surface coal mining and reclamation operations authorized prior to the effective date of this subchapter may be conducted beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present: (1) An application for a permit to conduct those operations under this part has been made within

two months of the implementation of the Federal program for Indian lands;

(2) OSM has not yet rendered an initial administrative decision approving or disapproving the permit application; and

(3) Those operations are conducted in compliance with all terms and conditions of the lease or minerals agreement, the existing authorization to mine, the requirements of the Act, and the requirements of 25 CFR Chapter I.

(d) Whenever surface coal mining and reclamation operations are proposed to include both Indian lands and non-Indian lands, OSM will use reasonable efforts to ensure that reviews of the permit applications will be conducted cooperatively and concurrently by OSM and the regulatory authority responsible for the non-Indian lands.

§ 750.12 Permit applications.

(a) Each application for a permit, permit revision, or permit renewal to conduct surface coal mining and reclamation operations on land subject to this part shall be accompanied by a fee made payable to the United States. The amount or method of calculation of the fees shall be determined by the Director.

(b) Unless specified otherwise by the regulatory authority, each person submitting a permit application shall file no less than seven copies of the complete permit application package with OSM. OSM will ensure that the affected tribes, the Bureau of Indian Affairs, and when applicable, the Bureau of Land Management receive copies of the application.

(c)(1) The following requirements of Subchapter G of this chapter shall govern the processing of permit applications on Indian lands except as specified in paragraph (c)(2) or (c)(3) of this section.

- (i) Part 773;
- (ii) Part 774;
- (iii) Part 775;
- (iv) Part 777;
- (v) Part 778;
- (vi) Part 779;
- (vii) Part 780;
- (viii) Part 783;
- (ix) Part 784; and
- (x) Part 785;

(2) The following provisions of Subchapter G are not applicable to permitting on Indian lands:

- (i) Part 772;
- (ii) Sections 773.11, 773.15(c)(3), 777.17;
- (iii) Section 778.16 (a) and (b); and
- (iv) Sections 785.11, 785.12;

(3) *Special requirements.* (i) Approval of a transfer, assignment, or sale of rights granted under a permit shall not

be construed as approval of a transfer or assignment of a leasehold interest. Leasehold interests may be transferred or assigned only in accordance with 25 CFR Parts 211 and 212.

(ii) The following additional requirements are applicable to permit revisions:

(A) Applications for revisions pursuant to § 774.13(b) of this chapter shall contain the same information on the proposed revised operation as if the revised operation had been proposed as part of the initial operation permitted under this part.

(B) OSM shall determine if the application for revision is complete and if the proposed revision is significant. OSM shall consider the following factors as well as other relevant factors in determining the significance of a proposed revision: (1) Changes in production or recoverability of the coal resource; (2) the environmental effects; (3) the public interest in the operation, or likely interest in the proposed revision; and (4) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles or cultural resources.

(C) Significant revisions shall be processed as if they are new applications in accordance with Parts 773 and 775 of this chapter. Other revisions shall be reviewed to determine if the findings which were made in issuing the original permit are still valid.

(iii) Any section in this chapter which provides for consultation with, or notification to, State and local governments shall be interpreted as requiring in like manner consultation with, or notification to, tribal governments.

(d) The permit application package shall also contain:

(1) The mining plan required to be submitted by 25 CFR 216.7 or 43 CFR Part 3480, as applicable.

(2) The following information to assure compliance with Federal laws other than the Act:

(i) The description of the proposed surface coal mining and reclamation operation with respect to: (A) Increases in employment, population, and revenues to public and private entities; and (B) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(ii) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(iii) A statement, including maps and ownership data as appropriate, of any

cultural or historical site listed on the National Register of Historic Places within the permit and adjacent areas of the proposed surface coal mining and reclamation operation.

(iv) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR Part 800, of properties significant and listed, or eligible for listing, on the National Register of Historic Places within the permit area of the proposed surface coal mining and reclamation operation.

(v) A description of compliance with the American Indian Religious Freedom Act, and other Federal laws aimed at protecting cultural resources on Indian lands.

(vi) A description of the probable changes in air quality resulting from the surface coal mining operation and any necessary measures to comply with prevention of significant deterioration limitations, or other Federal laws for air quality protection.

(vii) A description of the location, acreage and condition of important habitats of selected indicator species located within the permit and adjacent areas of the proposed surface coal mining and reclamation operation.

(viii) A description of active and inactive nests and prey areas of any bald or golden eagles located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations.

(ix) A description and special studies, if required, of all threatened and endangered species and their critical habitats located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations.

§ 750.13 Small operator assistance.

Part 795 of this chapter is applicable on Indian lands.

§ 750.14 Lands designated unsuitable for mining by Act of Congress.

Part 761 of this chapter is applicable on Indian lands.

§ 750.15 Coal exploration.

Coal exploration operations on Indian lands shall be conducted in accordance with 25 CFR Part 216 and 43 CFR Part 3480, whichever is applicable.

§ 750.16 Performance standards.

After OSM issues a permit under this part, a person conducting surface coal mining operations on Indian lands shall do so in accordance with Parts 816, 817, 819, 822, 823, 824, 827, and 828 of this chapter. Prior to that time, the person conducting surface coal mining operations shall adhere to the

performance standards of 25 CFR Part 216, Subpart B.

§ 750.17 Bonding.

Subchapter J of this title is applicable on Indian lands.

§ 750.18 Inspection and enforcement.

(a) Parts 842, 843 and 845 of this chapter and the hearings and appeals procedures of 43 CFR Part 4 are applicable on Indian lands.

(b) OSM shall furnish copies of notices and orders to mineral owners or surface owners on whose land the surface coal mining operation takes place. OSM may furnish copies of notices and orders to any other person having an interest in the surface coal mining and reclamation operation or the permit area.

(c) BLM shall furnish copies of notices and orders to mineral owners or surface owners on whose land coal exploration operations take place and pursuant to 25 CFR 216.7 and 43 CFR Part 3480, where applicable, to any mineral owner or surface owner, or to any person having an interest in the coal mining operation.

(d) Whenever an authorized representative of the Secretary decides to conduct an inspection of any coal mining operations or any premises in which any records to be maintained are located, the appropriate representative of the local governing Indian tribe shall be notified and be invited to accompany the Secretary's representative on such an inspection.

(e) No provision in this chapter shall be interpreted as replacing or superseding any other remedies of the Indian mineral owners, as set forth in a contract or otherwise available at law.

(f) Appropriate officials of the local governing Indian tribe shall be notified of any hearings or conferences conducted regarding civil penalties and shall be invited to attend.

§ 750.19 Blaster certification

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of 30 CFR 816.61(c) and 817.61(c) and, upon promulgation of a Federally-administered blaster certification programs shall comply with the requirements contained therein.

§ 750.20 Adoption of Indian coal lease terms.

(a) All leases of coal on Indian lands are amended to include the following:

The Lessee shall comply with all applicable requirements of the Surface Mining Control and Reclamation Act of 1977, and all regulations promulgated thereunder, including those codified at 30 CFR Part 750.

(b) With respect to leases issued after August 3, 1977, the Secretary shall also include and enforce in such leases terms and conditions which are requested in writing by the Indian tribe whose interest is affected by such leases.

PART 755—TRIBAL-FEDERAL INTERGOVERNMENTAL AGREEMENTS

Sec.

755.1 Scope.

755.10 Information collection.

755.11 Application and agreement.

755.12 Terms.

755.13 Authority reserved by the Secretary.

755.14 Amendments.

755.15 Termination.

Authority: Pub. L. 95-87 30 U.S.C. 1201-1328.

§ 755.1 Scope.

This part sets forth requirements for the development, approval and administration of Tribal-Federal Intergovernmental Agreements.

§ 755.10 Information collection.

The information collection requirements contained in this part do

not require approval from the Office of Management and Budget under 44 U.S.C. 3507 because there are expected to be less than 10 respondents annually.

§ 755.11 Application and agreement.

(a) An Indian tribe may request that the Secretary enter into a Tribal-Federal intergovernmental agreement with the tribe.

(b) A request for a Tribal-Federal intergovernmental agreement shall be submitted in writing and shall include proposed terms of the agreement consistent with the requirements of this part.

§ 755.12 Terms.

The terms in each Tribal-Federal intergovernmental agreement may include:

(a) Provisions to allow the tribe to work with and assist OSM in the review of permit applications, and to recommend appropriate action on permits, permit applications, inspection and enforcement, and bond release or forfeiture; and

(b) Provisions to provide funding for tribal employees to attend and testify at

hearings and to perform other functions under the agreement.

§ 755.13 Authority reserved by the Secretary.

The Secretary shall not delegate to any Indian tribe, nor shall any Tribal-Federal Intergovernmental Agreement be construed to delegate to any tribe, the nondelegable authority exercised by or reserved to the Secretary on Indian lands.

§ 755.14 Amendments.

An agreement that has been approved pursuant to this part may be amended by mutual agreement of the Secretary and the officers of the tribe.

§ 755.15 Termination.

An agreement may be terminated by either party upon written notice to the other specifying the date upon which the agreement will be terminated. The date of termination shall be no less than 30 days from the date of the notice.

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Friday
September 28, 1984

Part IV

Department of Commerce

National Telecommunications and
Information Administration

Public Telecommunications Facilities
Program; Closing Date for Applications

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is inviting applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program of NTIA. Congress has appropriated an amount not to exceed \$24 million for fiscal year 1985, but the authorized level for the Public Telecommunications Facilities Program has not yet been established at this date. Applicants for grants under PTFP must file their applications on or before January 16, 1985. NTIA anticipates making grant awards in early August 1985.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390, et seq. (Act), as amended by the Public Broadcasting Amendments of 1981, Pub. L. No. 97-35 (1981 Amendments).

FOR FURTHER INFORMATION CONTACT:

Persons desiring further information should contact Dennis R. Connors, Acting Program Director, PTFP/NTIA/DOC, Room 4625, Washington, D.C. 20230. Telephone (202) 377-5802.

SUPPLEMENTARY INFORMATION:

I. Program Goals

The Goals of this program, as stated in section 390 of the Act are:

To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

To accomplish these goals NTIA has adopted a list of priorities which appear in Appendix A to the PTFP Interim Rules. (Federal Register, Vol. 49, No. 182, September 18, 1984)

II. Closing Date

Pursuant to § 2301.10 of the PTFP Interim Rules, (Federal Register, Vol. 49, No. 182, September 18, 1984) the Administrator of NTIA hereby established the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications is January 16, 1985.

III. Eligibility

To be eligible to apply for or receive a grant under the PTFP, an applicant must be: (A) A public or noncommercial educational broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; (E) a nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious to plan for the provision of public telecommunications services or (F) a State or local government or agency or a political or special purpose subdivision of a State.

IV. Applications Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the agency.* All persons and organizations on the PTFP's mailing list will receive a copy of the current application form and the Interim Rules shortly. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Interim Rules carefully before submitting applications. Applicants whose applications had been deferred, will receive pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the appropriate State's Single Point of Contact (SPOC). Applicants are required

*The Office of Management and Budget (OMB) has approved the information collection and reporting requirements contained in NTIA's application as required under the Paperwork Reduction Act of 1980 (OMB Approval No. 0660-0003).

to serve a copy of their completed application on the appropriate single point of contact on or before January 16, 1985. Applicants are encouraged to contact the appropriate SPOC as early as possible before the NTIA closing date.

V. Funding Criteria

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

The funding criteria for construction applications are as follows:

(a) How well the applicant has satisfied the assurances required in § 2301.5; (b) the program purposes set forth in § 2301.20 as well as the specific program priorities set forth in the Appendix of these Rules; (c) the adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area; and the availability of necessary funds for capital expenditures; (d) the extent to which non-Federal funds will be used to meet the total cost of the project; (e) The extent to which the applicant has: (1) Assessed specific educational, informational, and cultural needs of the community(ies) to be served by the proposed public telecommunications service; (2) evaluated alternate technologies, the bases upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available; (3) provided meaningful documentation of applicant's equipment requirements; (4) provided meaningful documentation of community support for the service to be provided (such as letters from key elected/appointed policy-making officials, from agencies for whom the applicant produces or will produce programs or other materials); (f) the extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned (or controlled) by minorities and women; (g) the extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds; (h) the extent to which the eligible equipment requested meets current broadcast industry performance standards; (i) the

extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality; (j) the extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area; (k) the extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; (l) the extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations; (m) the readiness of the Commission to grant any necessary authorization; (n) the urgency for funding based on justification of needs.

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

The funding criteria for planning applications are as follows:

(a) How well the applicant has satisfied the assurances required in § 2301.5; (b) the extent to which the applicant's interests and purposes are consistent with the purposes of the Act

and the priorities of the Agency; (c) the qualifications of the proposed planner to provide a public telecommunications facilities plan; (d) the extent to which the planning project's proposed procedural design assures that the applicant would obtain adequate: (1) Financial, human and support resources necessary to conduct the plan, (2) coordination with other telecommunications entities at the local, state, regional and national levels, (3) evaluation of alternate technologies and existing services, and (4) participation by the public to be served (and by minorities and women in particular) in the planning of the project; (e) the extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project); (f) the extent to which the proposed procedure and timetable are feasible and can achieve the expected results.

VI. Filing Applications

Applications delivered by mail must be *RECEIVED* no later than close of business, January 16, 1985, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Applications delivered by

hand must be delivered to the above address between 8:30 a.m. and 5:00 p.m. on or before close of business January 16, 1985. Applicants whose applications are not received by close of business January 16, 1985 will be notified that their applications will not be considered in the current competition and will be returned.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before January 16, 1985. However, you are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time the better chance your FCC application will be properly processed to coincide with our grant cycle. (An application is tendered to the FCC when it has been received by the Secretary of the FCC). NTIA will return the applications of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 16, 1985.

(Catalog of Federal Domestic Assistance No. 11.550)

Scott Mason,

Chief, Management Division.

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