DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 740, 746 and 750

RIN 1029–AB83

Indian and Federal Lands

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend its regulations by clarifying the definition of ''Indian lands'' at 30 CFR 700.5 for purposes of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the implementing regulations at 30 CFR Chapter VII. The proposed clarification is required pursuant to a settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Indian Tribe to settle the tribes' challenges to a 1989 rulemaking governing coal leases and surface coal mining and reclamation operations on Indian lands. OSM is also proposing various changes to the Federal lands program at 30 CFR Parts 740 and 746, and the Indian lands program at 30 CFR Part 750, in conjunction with the proposed clarification to the definition of Indian lands.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern time, on April 20, 1999.

Public hearings: Upon request, we will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** prior to the hearings. We will accept requests for public hearings until 5 p.m., Eastern time, on March 12, 1999. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of several methods. You may mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also comment via the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.** The address, date and time for any public hearing held will be announced prior to the hearings. Any individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone (202) 208–2661. E-mail address: shudak@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. General Background on Proposed Rule
III. Discussion of Proposed Rule
A. Part 700: General.
1. Proposed Clarification of Definition of Indian Lands.
2. Basis and Purpose for Proposed Clarification of Definition.
3. Navajo Land Consolidation Area.
4. Surface and Mineral Ownership of Individual Indian Trust Allotments Within the Navajo Land Consolidation Area.
5. Coal-Bearing Allotments Within the Off-Reservation Portion of the Navajo Land Consolidation Area.
6. Surface Coal Mining Operations Within the Navajo Land Consolidation Area.
7. SMCRA Regulation at the McKinley Mine.
8. Transfer of SMCRA Regulatory Jurisdiction.
9. Allocation of Abandoned Mine Land Fees and Title V Funding .
B. 30 CFR Parts 740 and 746: General Requirements for Surface Coal Mining and Reclamation Operations on Federal ands; Review and Approval of Mining Plans.
1. Section 740.1: Scope and purpose.
2. Section 740.4: Responsibilities.
3. Section 740.5: Definitions.
4. Section 740.11: Applicability.
5. Section 746.13: Decision document and recommendation on mining plan.
C. 30 CFR Part 750: Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands.
1. Section 750.6: Responsibilities.
2. Section 750.12: Permit applications.
IV. Procedural Determinations.

I. Public Comment Procedures

Electronic or Written Comments

If you are submitting written comments on the proposed rule please be specific, limit your comments to issues pertinent to the proposed rule, and explain the reason for your recommendations. Except for comments provided electronically, please submit three copies of your comments, if possible, to our Administrative Record Room at the address listed above (see **ADDRESSES**). All comments sent to the Administrative Record Room will be logged into the administrative record for the rulemaking. However, we will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to addresses other than those listed in **ADDRESSES** may not be logged in.

Public Hearing

We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Ms. Hudak (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5:00 p.m., Eastern time, on March 12, 1999. If no one has contacted Ms. Hudak to express an interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, we request that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist us in preparing appropriate questions, we also request, if possible, that each person who plans to testify submit to us at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1029–AB83'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202–208–2847.

We will make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. General Background on Proposed Rule

The regulations proposed here are primarily intended to implement one of the two rulemaking provisions set forth in the settlement agreement entered into between the Department of the Interior (DOI or the Department) and the Navajo Nation and Hopi Indian Tribe in April 1995. The agreement settled litigation stemming from tribal challenges to final rules published on May 22, 1989 (54 FR 22182) that amended OSM's regulations at 30 CFR Part 750 governing surface coal mining regulatory requirements on Indian lands and the Bureau of Indian Affairs' (BIA) regulations at 25 CFR Part 200 governing leases of coal on Indian lands. The settlement was approved by the U.S. District Court for the District of Columbia in June 1995. *Hopi Indian Tribe* v. *Babbitt*, Nos. 89–2055, 89–2066 (D.D.C. June 20, 1995).

In their legal challenges to the 1989 rulemaking, the plaintiffs complained, among other things, that the designation of OSM in the final rule as the exclusive and sole regulatory authority over surface coal mining operations on Indian lands violated section 710 (Indian lands) of SMCRA. The tribes contended that the Secretary's refusal to delegate surface coal mining regulatory authority to the tribes was contrary to his fiduciary and trust obligations to the tribes.

Additionally, the Navajo Nation claimed that off-reservation trust allotments are Indian lands subject to OSM regulation under SMCRA and that the Secretary may not lawfully allow or delegate to the States any permitting or regulatory authority under SMCRA on such lands.

The tribes also raised objections to BIA's regulations governing coal leases on Indian lands, claiming that the Secretary must incorporate SMCRA standards as terms and conditions in all such existing leases. The Navajo Nation further asserted that the Secretary must incorporate, at the tribe's request, other non-SMCRA terms and conditions into such leases issued after SMCRA's enactment.

The Secretary, in the settlement agreement, maintained his position that he presently lacks statutory authorization to delegate SMCRA regulatory primacy to Indian tribes. He did, however, agree to consider in good faith requests by the tribes to contract specific regulatory functions, provided such requests are in compliance with the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*). The Secretary also agreed that the Navajo Nation and the Hopi Tribe retain the inherent sovereign authority to regulate surface coal mining operations on lands within their jurisdiction, provided such regulation is consistent with and at least as stringent as regulation under SMCRA, and does not interfere or conflict with OSM's Federal program for Indian lands.

Under the terms of the settlement agreement, the Secretary agreed, among other things, to propose a rule clarifying the definition of Indian lands at 30 CFR 700.5 for purposes of SMCRA and the implementing regulations. Specifically, the Secretary agreed to include in the proposed definition ''all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.'' The settlement further provided that the proposed definition of Indian lands may address other issues arising from section 701 of SMCRA.

The Secretary also agreed to propose rules to amend BIA's regulations at 25 CFR 200.11 to require the inclusion of SMCRA standards as terms and conditions in leases of coal on Indian lands. BIA intends to prepare that rulemaking as a separate proposal that will be published for public comment in a future **Federal Register** notice.

The Secretary further agreed that either or both of the plaintiffs may challenge any rule promulgated pursuant to the settlement that differs substantially from the terms set forth in the agreement. Any party with standing may challenge such a rule under the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), and nothing in this notice or in the settlement agreement predetermines the outcome of this rulemaking.

III. Discussion of Proposed Rule

A. Part 700: General

1. Proposed Clarification of Definition of Indian Lands

The term ''Indian lands'' is currently defined at 30 CFR 700.5 as:

> all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

The regulatory definition at 30 CFR 700.5 mirrors the statutory definition at section 701(9) of SMCRA. OSM is proposing to replace the current definition of Indian lands with a revised version, which would read as follows:

> (a) All lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent or rights-of-way; and
>
> (b) All lands including mineral interests held in trust for or supervised by an Indian tribe. Such lands include, but are not limited to, all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.

OSM believes that the revised two-part definition would more clearly distinguish between the two general types of lands that qualify as Indian lands under SMCRA, namely all lands within Federal Indian reservation boundaries and all lands held in trust for or supervised by an Indian tribe. Pursuant to the settlement agreement, OSM is further proposing to add clarifying rule language that Indian trust allotments located within a tribal land consolidation area approved by the Secretary fall within the category of lands held in trust for or supervised by an Indian tribe and therefore qualify as Indian lands under SMCRA.

2. Basis and Purpose for Proposed Clarification

There are several possible bases for determining that allotted lands are ''Indian lands'' for purposes of SMCRA. Under the SMCRA definition of ''Indian lands,'' one possible basis would be a determination that a tribe supervises the lands. Another possible basis would be a two-part determination: first, that Congress intended the reference to lands ''supervised by'' an Indian tribe in the SMCRA definition of ''Indian lands'' to include those lands encompassed by the term ''Indian country;'' and second, a determination that allotted lands are Indian country. OSM has taken the position that Congress intended the phrase ''lands . . . supervised by'' an Indian tribe to include lands encompassed by ''Indian country.'' *Valencia Energy Co.*, 109 IBLA 59 (1989). These possible bases are discussed in more detail below.

Tribal Supervision

Counsel for the Navajo Nation has suggested that there are several respects

in which the tribe supervises allotted lands outside the reservation in the tribal land consolidation area. Examples of such tribal supervision may include, but are not necessarily limited to, the exercise of grazing supervision on allotted lands and tribal implementation of certain Federal environmental statutory provisions on allotted lands. The Navajo Nation has been approved for treatment as a state for purposes of implementing the underground injection control program under the Safe Drinking Water Act. That approval extends to all Navajo allotted lands. EPA review is pending on a Navajo Nation application for public water system supervision under the Safe Drinking Water Act.

The Navajo Nation may also assert authority to tax certain activities on Navajo allotted lands. Counsel for the tribe has suggested that Navajo authority to tax may support a conclusion that the tribe supervises the allotted lands. OSM requests comments as to whether, and in what specific respects, the Navajo Nation supervises the Navajo allotments in the tribal land consolidation area.

Indian Country

In the *Valencia* case, which addressed whether certain lands were Indian lands for purposes of SMCRA, OSM referred to the legislative history of the Land Use Policy Planning and Assistance Act of 1973 (LUPA), another Federal bill considered by Congress at the same time the definition of ''Indian lands'' was first included in SMCRA. LUPA contained a similar definition of ''Indian lands''. OSM quoted from the legislative history of LUPA, which stated that Congress intended the phrase ''supervised by an Indian tribe'' to cover

> lands which are Indian country for all practical purposes but which do not enjoy reservation status. The Committee recognizes that Indian tribal land use planning processes and programs would be largely meaningless if the tribes could not control key tracts within their reservations which they did not own or lands outside a reservation which they own or for which they possessed administrative responsibility.

S. Rep. No. 197, 93d Cong., 1st Sess. 127 (1973). OSM concluded in that case that Congress must have intended the same term and almost identical definition in SMCRA to have the same interpretation discussed in the Committee report on LUPA. (Therefore, OSM concluded in *Valencia* that lands owned by an Indian tribe are ''Indian lands'' within the purview of the SMCRA definition at section 701(9)). The IBLA affirmed OSM's analysis. 109 IBLA 60.

In a recent U.S. Supreme Court decision, *Alaska* v. *Venetie*, 118 S.Ct. 948 (1998), the court concluded that, for purposes of both federal civil and criminal jurisdiction, ''Indian country'' means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . , (b) all dependent Indian communities within the borders of the United States . . . , and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.'' 118 S.Ct. 948, 952 (citations omitted). *See* also 18 U.S.C. section 1151; *DeCoteau* v. *District County Court for Tenth Judicial District*, 420 U.S. 425, 427, n. 2(1975).2. Under this standard, Indian allotments would be ''Indian country.'' And if Congress did intend ''Indian country'' to be included in lands ''supervised by an Indian tribe,'' then allotments would also be ''supervised by an Indian tribe,'' and therefore would be included in the SMCRA definition of ''Indian lands.''

OSM notes that there was a challenge by the State of New Mexico to the 1984 regulations establishing the Federal program for Indian lands at 30 CFR Part 750. As one of the steps taken in settlement of that litigation, OSM agreed to issue a clarification of the 1984 regulatory preamble in which the Department disclaimed any assertion that all individual allotments outside of the exterior boundaries of an Indian reservation were ''Indian lands'' within the contemplation of SMCRA. OSM has taken the position that whether or not any specific Indian allotment is within the ''Indian lands'' definition of SMCRA depends on whether the allotment can be deemed to be ''held in trust for or supervised by an Indian tribe.'' See 53 FR 3993 (February 10, 1988); 109 IBLA 68, fn 5.

OSM requests comment as to these and any other specific bases for determining that the allotted lands in the Navajo land consolidation area are ''Indian lands'' for purposes of SMCRA.

3. Navajo Land Consolidation Area

Navajo Land Consolidation Plan

For purposes of this rulemaking, the tribal land consolidation area cited in the settlement agreement and in this proposed rule refers to a large expanse of land that was established by the Navajo Nation by tribal resolution to provide the tribe with the additional authority to consolidate and augment the Navajo land base in accordance with the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.* The area is described in the Navajo Land Consolidation Plan that was adopted by the Navajo Nation pursuant to Navajo Tribal Council Resolution No. CMY–23–80 entitled ''*Approving the Navajo Land Consolidation Act of 1988*,'' as amended by Resolution No. CO–43–88 entitled ''*Approving Amendments to the Navajo Land Consolidation Plan*.'' The two resolutions, and accompanying attachments and exhibits, were passed by the Navajo Tribal Council on May 4 and October 25, 1988, respectively. The Navajo Land Consolidation Plan was subsequently approved in January 1989 by the BIA's Navajo Area Office in accordance with delegated authority from the Secretary of the Interior.

As described in the approved consolidation plan, the land acquisition and consolidation area ''includes all lands, including federally administered and public domain lands, within: (1) the boundaries of the Navajo Reservation; (2) Navajo 'Indian country' as defined by 18 U.S.C. § 1151; (3) the aboriginal land area of the Navajo Tribe of Indians, as established by the Indian Claims Commission; (4) the counties of McKinley, San Juan, Sandoval, Cibola, Bernalillo, Socorro, and Valencia in the State of New Mexico; and (5) such other lands designated on the map attached hereto (to the consolidation plan) as Figure 'A'.'' The consolidation plan further states that ''any land consolidation plans previously approved by the Bureau of Indian Affairs for the satellite Reservations of Alamo, Canoncito, and Ramah shall be deemed to be incorporated herein, and may be amended by the Navajo Tribal Council or its duly authorized Committee.''

Navajo Aboriginal Area and Indian Claims Commission Litigation

Figure A, the map referenced in the approved consolidation plan, does not clearly delineate the outer boundary of the Navajo consolidation area and therefore could not be readily used by OSM as a basis for determining the location and extent of coal-bearing allotments located within the approved area. Such a determination was necessary in order for OSM to assess the potential geographic scope of the proposed rule.

In lieu of Figure A, OSM requested from the Navajo Nation a more precise depiction of the consolidation area. In response, the Navajo Nation prepared and provided to OSM a detailed large-scale map dated December 13, 1996, entitled ''Aboriginal Boundary of the Navajo Indian Reservation.'' OSM then requested additional information and clarification from the tribe concerning the history and origin of the aboriginal

boundary depicted on the map because it is this boundary line which largely defines the perimeter of the Navajo consolidation area. The Navajo Nation responded with a letter dated July 14, 1997, providing explanatory information concerning the aboriginal boundary and enclosing a second map dated January 29, 1997.

The January 29 map provided by the Navajo Nation was prepared by the Navajo Land Department and is, for the most part, identical to the earlier December 13 map. It depicts land status and land ownership information in the general vicinity of the Navajo consolidation area, as well as the location of more than eighty Navajo sacred places. As the Navajo Nation explained in its July 14 letter, both ''the Navajo Land Consolidation Act map (Figure A) and the January 29 map are derived from an original map that was created for litigation purposes in Navajo Land Claims litigation in the 1950s.''

The litigation cited in the Navajo Nation's July 14 letter is a reference to the tribe's aboriginal land claim that was filed with the Indian Claims Commission on August 8, 1951. The commission was created on August 13, 1946, by an act of Congress to hear and resolve claims against the United States by any Indian tribe, band, or other identifiable group of American Indians. Although originally established for a ten-year period, the commission was subsequently granted a series of extensions by Congress and continued to exist through September 30, 1978.

It should be noted that the January 29 Navajo Land Department map depicts the aboriginal area recognized by the tribe, as well as a smaller tract of land, designated on the map as the ''Navajo Title Award Area,'' which represents the aboriginal area judicially established by the Indian Claims Commission. In explaining the basis for the larger area established by the tribe, the Navajo Nation's July 14 letter states that ''the aboriginal boundary line appears to connect habitation sites of unknown Indians, which could be Navajo, but are not prototypical Navajo structures, or are unknown but Indian structures, or which are neither Anglo American or Spanish sites, as agreed by the expert witnesses'' of the Navajo Nation, various other tribes, and the Court of Claims. The tribe's letter goes on to describe the smaller judicially established aboriginal area as consisting of ''a combination of known Navajo prototypical habitation sites and sacred places joined together by a line approved for settlement of litigation concerning aboriginal land claims of the Navajo Nation in the Court of Claims in Docket 229.'' Docket 229 is a reference to the docket number assigned to the Navajo's claim before the Indian Claims Commission. The relevance of these two aboriginal areas to the Navajo consolidation area and to this rulemaking is explained below.

The Indian Claims Commission issued its Findings of Fact and Opinion in the Navajo case on June 29, 1970. In ruling on the Navajo claim, the Indian Claims Commission concluded, in pertinent part, ''that as of July 25, 1868, the effective date of the 1868 Navajo Treaty of cession, the plaintiff held aboriginal title to those lands described in Finding 17 herein (in the commission's Findings of Fact), except for those areas contained within any Spanish or Mexican grants or parts thereof falling within the boundaries of the lands so described; that the plaintiff ceded the above described aboriginal title lands to the United States under the 1868 Treaty, except for the area specifically reserved to the plaintiff under Article 2 of said Treaty; and that the plaintiff tribe did not have aboriginal title to the balance of the lands in suit here.'' 23 Ind. Cl. Comm. 275 (1970).

Finding of Fact No. 17 sets forth a detailed metes and bounds description of the area to which the Navajo Nation held aboriginal title on July 25, 1868, as determined by the Indian Claims Commission. This so-called adjudicated or judicially established area corresponds to the ''Navajo Title Award Area'' depicted on the January 29 Navajo Land Department map and is also the third item listed in the Navajo Land Consolidation Plan. The perimeter of the adjudicated area, as shown on that map, connects a series of fifteen points which correspond to the various communities and geographic features cited in the commission's metes and bounds description. As noted earlier, this area is the smaller of the two aboriginal areas illustrated on the January 29 map.

Consolidation Area Lands Affected by the Proposed Rule

The Navajo land consolidation area is situated in northwestern New Mexico, northeastern Arizona, southwestern Colorado and southeastern Utah. The perimeter of the consolidation area consists of the outermost boundary line that is formed by superimposing the larger aboriginal area recognized by the Navajo Nation and the smaller adjudicated area established by the Indian Claims Commission and then expanding that line, as necessary, to fully encompass the seven New Mexico counties that are cited as the fourth item in the Navajo Land Consolidation Plan.

The consolidation area includes both Federal Indian reservation lands and off-reservation lands. The Federal Indian reservation portion of the consolidation area, for purposes of the Navajo Land Consolidation Plan, consists of all lands within the boundaries of the Navajo Indian Reservation and the satellite reservations of Alamo Navajo, Canoncito, and Ramah Navajo. All lands within the boundaries of Federal Indian reservations are Indian lands pursuant to SMCRA section 701(9) and the implementing regulation at 30 CFR 700.5; their jurisdictional status, for purposes of SMCRA regulation, is not at issue. Therefore, this proposed rulemaking relates exclusively to the off-reservation portion of the Navajo consolidation area and, more specifically, to individual Indian trust allotments situated within that portion of the consolidation area.

A map of the consolidation area was prepared by OSM and BIA in the course of developing this proposed rule. It duplicates on a smaller scale the relevant data from the January 29 Navajo Land Department map, including the boundaries of the two aboriginal areas depicted on that map. It also illustrates major highways, cities and towns; the various counties that are cited in the Navajo consolidation plan or are otherwise referenced in this preamble; the location of Federal Indian reservations and pueblos situated partially or completely within the consolidation area; and the general location of the McKinley Mine, an existing surface coal mine whose relevance to this rulemaking will be discussed later in this preamble. Copies of the consolidation area map are available, upon request, by contacting the person specified earlier under **FOR FURTHER INFORMATION CONTACT.**

4. Surface and Mineral Ownership of Individual Indian Trust Allotments Within the Navajo Land Consolidation Area

An individual Indian trust allotment, whether located within or outside the exterior boundaries of a Federal Indian reservation, is allotted to an individual member of an Indian tribe. Each of the trust allotments located within the Navajo land consolidation area was originally allotted to an individual member of the Navajo Nation, but nearly all are now in multiple ownership because of inheritance. The majority of the trust allotments consist of 160-acre parcels of land (one-quarter of a 640-acre section), with some variations in size due to survey corrections resulting from the curvature of the earth or for

reasons such as conformity to geographic features (e.g. rivers) or governmental boundary lines. Additionally, a small number of allotments may be either larger or smaller than 160 acres due to differences in the statutory provisions governing the allotment process, or through partition or sales by the Indian owners.

The surface rights to the Navajo trust allotments located within the consolidation area are held by the Indian owners, while the coal, oil and gas, and other mineral rights were generally reserved for the Federal government at the time of allotment. Under the terms of the settlement agreement approved on January 28, 1997, in *Bertha Mescal* v. *United States of America,* No. CIV 83–1408 LH/WWD (D.N.M.), the Federal government agreed to convey the reserved subsurface minerals underlying Navajo allotments in New Mexico to the plaintiff allottee owners of the surface rights. As defined in the settlement, the plaintiffs included ''all Navajo Indians who hold beneficial title to any interest in allotment land in New Mexico where the allotment trust patent recites that the United States has a reserved mineral interest * * *'' The *Mescal* agreement settled a long-standing class action lawsuit in which the plaintiff Navajo allottees sought a declaration of beneficial title to minerals on or underlying the surface of their respective allotments.

The McKinley Mine, an existing surface coal mine mentioned earlier in this preamble, includes four Federal coal leases within its approved permit area. The *Mescal* agreement contains certain provisions concerning those leases and the overlying Navajo allotments. Specifically, the agreement provides that the Bureau of Land Management (BLM) will issue supplemental trust patents for the 46 McKinley allotments (45 of which are presently included within the McKinley Mine permit area) within six months of the expiration, relinquishment or other termination of the ''Federal Leases'' and that, until such patents are issued, the United States will retain ownership of the reserved minerals. The Bureau of Land Management is the bureau within the Department of the Interior responsible for, among other things, the leasing and supervision of operations involving Federal onshore mineral resources. The term ''Federal Leases'' includes the four McKinley coal leases and certain Federal oil and gas leases.

The *Mescal* settlement further provides that the ''Federal Leases will continue to be administered solely under federal regulations applicable to mineral leases issued under the MLA (Mineral Leasing Act)'' during the term of the leases. The Mineral Leasing Act of 1920, as amended, is the Federal statute that largely governs the leasing and development of certain Federal mineral resources, including coal and onshore oil and gas. The relevance of these *Mescal* settlement provisions to this rulemaking and to SMCRA regulation at the McKinley Mine will be discussed somewhat later in this preamble.

(*Mescal* also provides that BLM will regulate certain potential future Indian mineral leases, collectively referred to in the agreement as the ''Settlement Leases,'' under the regulations applicable to Federal mineral leases issued under the MLA. Those leases would involve both coal, and oil and gas resources. As specified in *Mescal,* any such Settlement Leases for Indian coal could potentially involve up to a total of 28 individual Navajo allotments. The Department has not yet determined the appropriate measures for implementing the *Mescal* provisions concerning Settlement Leases. Therefore, the regulation of any such leases in light of *Mescal* is not addressed in this rulemaking.)

With respect to revenues generated by the McKinley coal leases, the settlement provides that on and after July 1, 1998, and after approved counsel fees are satisfied, 50% of monies received under the terms of the McKinley leases will be distributed to the ''McKinley Fund'' for distribution to the allottees holding beneficial interests in the surface of the allotments. Prior to the *Mescal* agreement, the monies allocated to the McKinley Fund would have been deposited in the U.S. Treasury pursuant to Section 35 of the MLA (30 U.S.C. 191). (The other 50% of the revenues generated by the McKinley coal leases will continue to be distributed to the State of New Mexico pursuant to Section 35 of the MLA.) The McKinley Fund includes all settlement funds derived from the McKinley coal leases and received by the Minerals Management Service (MMS) after July 1, 1998. MMS is the Department of the Interior bureau which, among other things, administers mineral revenues generated from Federal and Indian lands.

5. Coal-Bearing Allotments Within the Off-Reservation Portion of the Navajo Land Consolidation Area

The off-reservation portion of the Navajo land consolidation area extends over parts of New Mexico, Arizona, Colorado and Utah. OSM and BIA have jointly determined that, of those four States, only New Mexico appears to contain coal-bearing Indian trust allotments. OSM and BIA made this determination after a detailed review and analysis of the available information on allotments and coal resources for the off-reservation portion of the consolidation area. This information was obtained from several sources and publications.

A computer-generated listing of some 3,640 Navajo allotments located within the Navajo land consolidation area in New Mexico was provided by BIA's Land Titles and Records Office in Albuquerque, New Mexico. That office maintains the official land records and title documents for Indian lands located under the jurisdiction of BIA's Albuquerque, Navajo and Phoenix Area Offices. The allotment data that was provided included the tract identification number for each allotment, as well as township, range and section information.

OSM obtained coal resource data for part of the off-reservation portion of the consolidation area from a 1971 publication entitled *Strippable Low-Sulfur Coal Resources of the San Juan Basin in New Mexico and Colorado* (New Mexico Bureau of Mines & Mineral Resources, Memoir 25, 1971). The report was prepared by the New Mexico Bureau of Mines & Mineral Resources, with the assistance of the U.S. Bureau of Mines. As stated in the report summary, the study was conducted in order ''to determine the amount, location, quality and economic position of low-sulfur strippable coal in the San Juan Basin.'' The report appears to be the most comprehensive evaluation, to date, of known or potential coal resources within the basin, although the study's authors acknowledge that ''reserve estimates range in reliability from proven tonnages to speculation based on geologic inferences.''

The New Mexico report classified coal reserves into two general categories: those consisting of beds three or more feet thick beneath 10 to 150 feet of overburden, and those in beds five or more feet thick beneath 150 to 250 feet of overburden. Of particular significance to this rulemaking is a map included within the report entitled ''Fields and Areas of Strippable Low Sulfur Coal in San Juan Basin.'' That map depicts the boundaries of the various coal fields and coal areas located within the basin, with each such coal-bearing unit identified by name and relative stratigraphic position.

Coal resource data for the remainder of the off-reservation portion of the consolidation area not covered in the New Mexico study was obtained from a 1996 U.S. Geological Survey (USGS) map entitled ''Coal Fields of the

Conterminous United States'' (U.S. Geological Survey Open-File Report 96–92). Unlike the New Mexico report, which evaluated and selectively identified those areas within the San Juan Basin that could potentially be surface mined, the USGS map depicts all of the locations where coal is known to exist within the conterminous United States without regard to actual mining potential.

Based on an analysis of the allotment and coal resource data described above, OSM and BIA have jointly determined that some 1,895 Navajo allotments located within the Navajo land consolidation area lie partially or completely over surface minable coal. This figure represents 52% of the approximately 3,640 Navajo allotments that lie within the consolidation area. OSM and BIA made this determination using a variety of electronic mapping and Geographic Information System software to create a composite map depicting the location of some 3,500 Navajo allotments relative to the coal fields and coal areas identified in the New Mexico report. The 3,500 allotments that were electronically plotted represent the subset of consolidation area allotments that fell within a certain proximity (0 to 40 miles) to the coal-bearing areas. A comparison of the allotment data with the 1996 USGS map indicated that no allotted lands appear to be located within the vicinity of the additional coal-bearing areas identified on that map. Copies of the map depicting the location and distribution of coal-bearing Navajo allotments located within the Navajo consolidation area are available, upon request, from the person specified earlier under **FOR FURTHER INFORMATION CONTACT**.

The vast majority of the coal-bearing allotments are located within the borders of McKinley or San Juan Counties in New Mexico. All of the coal-bearing allotments lie within the San Juan Basin which is described in the New Mexico report as ''a major physiographic subdivision of the Colorado Plateau in northwestern New Mexico and southwestern Colorado'' containing three major coal-bearing zones. The report describes the areas of strippable coal as lying ''along the basin margins—mainly the western and southern—in roughly concentric belts of outcrop of coal-bearing strata.''

As noted earlier, 45 individual Indian trust allotments in McKinley County are already either partially or completely included within the McKinley Mine permit area. There are currently no other surface coal mining operations within the Navajo consolidation area that include allotted lands within their existing permit boundaries. However, at least one previous mining proposal submitted to the New Mexico regulatory authority in the 1980's would have included a number of individual Indian allotments in McKinley County within its proposed permit area. A second proposed mine would have been immediately adjacent to such lands on its southern and eastern permit boundaries. The permit applications for those mines were subsequently withdrawn by the applicants. Another proposed mine involved the construction of a railroad corridor, a portion of which traverses a quarter section of allotted land. Although the mining proposal was later withdrawn by the applicant, the railroad corridor was completed in anticipation of eventual mining in the area.

OSM and BIA did not attempt to determine the number of additional allotments, if any, that overlie or intersect areas where the potential for underground coal mining might reasonably exist. At this time, OSM and BIA are unaware of any published data that evaluates the coal resources of either the San Juan Basin or the Navajo consolidation area in terms of underground mining potential. Furthermore, OSM believes that speculation as to the likelihood, timing or extent of any future surface or underground coal mining on allotted lands within the consolidation area is beyond the scope of this rulemaking given the many complex economic, environmental and other variables that ultimately determine the feasibility of such mining proposals.

6. Surface Coal Mining Operations Within the Navajo Land Consolidation Area

Presently, there are eight actively-producing surface coal mining operations (one of which includes a separately permitted coal preparation plant) situated within the Navajo land consolidation area. (The term ''surface coal mining operations'' is defined in SMCRA § 701.28 to include specified aspects of both surface mining and underground mining.) Of those eight active mines, five are in New Mexico, two are in Arizona, and one is located in southwestern Colorado. There are also eight mines which have terminated coal production and are in various stages of reclamation. All of those mines are located in New Mexico. In addition, two SMCRA permits have been issued for a proposed surface coal mining operation that would lie in western New Mexico and would supply coal via railroad to a generating station in eastern Arizona. A State permit covers the mine and the New Mexico portion of the railroad, while an OSM permit has been issued for the Arizona portion of the railroad corridor. The State permit for that mine is currently the subject of a court challenge. In addition, the OSM permit is conditioned upon Federal approval of the mining plan for Federal coal in New Mexico. That mining plan has yet to be approved.

None of the eight mines currently in reclamation, nor the proposed mine, involve allotted lands. Of the eight active mining operations, three mines (and the coal preparation plant associated with one of the mines) lie entirely on Navajo and Hopi reservation lands in Arizona and New Mexico, while three are located exclusively on off-reservation lands (two mines in New Mexico and the mine in Colorado). The two remaining mines, both in New Mexico, include reservation lands and off-reservation lands. Of the five mines located partially or completely on off-reservation lands, only the McKinley Mine in New Mexico contains allotted lands within its approved permit boundaries. Hence, at this time, McKinley is the only mine whose jurisdictional and regulatory status would be affected by this proposed rule. SMCRA regulation at the McKinley Mine, and how it would be affected by this proposed rule, is discussed below.

7. SMCRA Regulation at the McKinley Mine

The McKinley Mine is an 18,692-acre active surface coal mining operation owned and operated by the Pittsburg & Midway Coal Mining Company (P&M). The mine straddles the boundary of the Navajo Indian Reservation near the Arizona-New Mexico border. The portion of the permit area that lies within the boundaries of the Navajo reservation, as well as a parcel of adjacent off-reservation split-estate tribal fee lands, comprises the Indian lands portion of the mine and is collectively referred to as the ''North Area.'' The remainder of the mine, the so-called ''South Area,'' includes off-reservation State, private, Federal and allotted lands, all of which are presently classified as non-Indian lands.

The Indian lands portion of the mine, or North Area, is regulated by OSM under the Federal program for Indian lands at 30 CFR Part 750. The North Area includes 7,019 acres of Navajo Reservation lands and 946 acres of adjacent off-reservation tribal fee lands. As noted earlier, all lands within the exterior boundaries of Federal Indian reservations are Indian lands for purposes of SMCRA regulation. Surface

coal mining operations, or portions thereof, located on such lands are and will continue to be regulated by OSM, in consultation with the affected Indian tribes, the Bureau of Indian Affairs and, as applicable, the Bureau of Land Management, unless legislation is enacted, pursuant to Section 710 of SMCRA, to allow Indian tribes to assume SMCRA regulatory jurisdiction on Indian lands.

The tribal fee lands on which OSM regulates are split-estate lands where the surface rights are owned by the Navajo Nation and the mineral rights are privately owned. Those lands were held to be Indian lands for purposes of SMCRA in two 1994 district court decisions. (*Pittsburg & Midway Coal Mining Co.* v. *Babbitt,* No. CIV 90–730 JC (D.N.M. Sept. 13, 1994); and *New Mexico* v. *Lujan,* No. 89–758–M (D.N.M. Feb. 14, 1994)). Those decisions upheld the Department's interpretation that lands located outside a Federal Indian reservation, the surface estate of which is owned by an Indian tribe and the mineral estate of which is privately owned, are Indian lands within the meaning of section 701(9) of SMCRA and thus are subject to OSM's regulatory jurisdiction. Prior to those rulings, the State of New Mexico also had asserted SMCRA regulatory jurisdiction on the tribal fee lands at the McKinley Mine.

As noted earlier, all of the lands within the McKinley Mine South Area are presently classified as non-Indian lands for purposes of SMCRA and are regulated by the State of New Mexico. New Mexico is a primacy State, meaning that it has in place an approved SMCRA program for the regulation of surface coal mining and reclamation operations located on State and private lands within its borders. New Mexico also has in place a State-Federal cooperative agreement whereby the State regulates coal mining operations located on Federal lands within its borders. The New Mexico Mining and Minerals Division (MMD), located within the State's Energy, Minerals and Natural Resources Department, is the State regulatory authority.

The McKinley Mine South Area is presently 10,727 acres in size and is composed of Federal, private, State, and allotted lands occurring in a complex checkerboard pattern. The surface ownership consists of 4,073 acres of State, Federal and private lands, and 6,654 acres of allotted lands. The allotted lands include all or part of 45 individual Indian trust allotments, 42 of which overlie leased Federal coal and three of which overlie unleased Federal coal. As noted earlier in this preamble, all of the McKinley allotments are included in the *Mescal* settlement and, under the terms of that agreement, the McKinley allottees are to be issued supplemental trust patents within six months of the expiration, relinquishment, or other termination of the existing Federal coal leases. Until that time, the United States will retain ownership of the reserved minerals and the mining of the McKinley coal leases will continue to be subject to the Federal mining plan approval requirements of OSM's regulations at 30 CFR Chapter VII and BLM's regulations at 43 CFR Group 3400.

8. Transfer of SMCRA Regulatory Jurisdiction

This proposed rulemaking to include within the definition of Indian lands all individual Indian trust allotments located within the Navajo land consolidation area would result in the transfer of SMCRA regulatory jurisdiction on such allotments from the State to OSM. The immediate effect of the rule change would be limited to the 6,654 acres of allotted lands included in the McKinley Mine South Area permit that are currently regulated by the New Mexico MMD. As of the effective date of the rule, OSM would assume SMCRA regulatory jurisdiction on those lands. OSM would also be the regulatory authority for any future surface coal mining operations, or portions thereof, located on individual Indian trust allotments lying within the off-reservation portion of the Navajo land consolidation area.

OSM's assumption of regulatory jurisdiction on individual Indian trust allotments located within the Navajo consolidation area would include permitting, and inspection and enforcement (I&E) duties that are now performed by the State. As noted earlier, the McKinley Mine is already subject to joint OSM-State regulation because it includes both Indian lands and non-Indian lands within its approved permit boundaries. This dual regulatory situation makes it essential that OSM and the State closely coordinate their permitting and I&E activities for the McKinley Mine to ensure consistent and non-duplicative regulation. Should OSM assume jurisdiction on the allotted lands currently under State permit in the McKinley Mine South Area, the need for regulatory coordination between OSM and New Mexico MMD would be considerably greater given the checkerboard pattern in which the 45 individual allotments occur within that area.

This proposed rulemaking would also trigger certain changes in the consultation procedures for surface coal mining and reclamation operations whose permit areas include allotted lands within the Navajo consolidation area. Specifically, consultation with individual allottee surface and/or mineral owners would be required in relation to permitting and other regulatory actions under SMCRA involving such allottees' lands. For the McKinley Mine, OSM consults with the Navajo Nation, pursuant to 30 CFR 750.6(a)(4), concerning the protection of non-coal resources of the area affected by the mine. Should allotted lands come to be defined as Indian lands for purposes of SMCRA, as proposed in this rulemaking, consultation would take place with both the affected Navajo allottees and the Navajo Nation for the portion of the mine located on allotted lands. Any potential conflicts that might arise between the allottees and the tribe with respect to the conduct of surface coal mining operations on allotted lands would be dealt with on a case-by-case basis.

OSM's regulations concerning consultation on Indian lands are contained in 30 CFR 750.6. A more detailed discussion of the consultation process, and how it would apply to allotted lands, can be found later in this preamble in conjunction with the discussion of OSM's proposed changes to those regulations.

9. Allocation of Abandoned Mine Land Fees and Title V Funding

The change in jurisdiction on allotted lands that would result from this rulemaking would affect the allocation of abandoned mine land (AML) fees that are collected from coal mining operations on such lands. OSM collects such fees (35 cents per ton for surface coal mines; 15 cents per ton for underground mining; and 10 cents per ton for lignite) pursuant to Title IV of SMCRA and the implementing regulations. The fees are used for eligible abandoned mine land reclamation projects and activities, or for construction of public facilities related to the coal or minerals industry. All of the AML fees are deposited in the U.S. Treasury for subsequent allocation to the so-called Federal share and the State or Tribal share. Fifty-percent of the fees from coal produced from State and private lands within a State, or from coal produced from Indian lands, is allocated to the respective State or Tribal share for use, once appropriated, on eligible reclamation projects and activities. The other 50% is allocated to the Federal share for uses, once appropriated, that include Federal reclamation projects, additional State or

Tribal grants, the Small Operator Assistance Program, AML emergency programs, and Federal administrative expenses.

As of the effective date of the rule change, the non-Federal share of AML fees derived from coal production on allotted lands within the Navajo land consolidation area would be allocated to the Navajo Nation's portion of the AML fund, rather than to New Mexico's portion of the fund. For the McKinley Mine, OSM estimates the total amount of AML fees derived from the four federal coal leases underlying the allotted lands portion of the permit area at $831,250 to $969,070 per year based upon 1997 and 1998 coal production levels. Thus, the 50% non-Federal share that would be redirected from the New Mexico State share to the Navajo Tribal share would range from $415,000 to $484,535 per year based upon current production levels.

The proposed rule could also affect the amount of annual funding that OSM provides to the State of New Mexico to support the implementation of its Title V regulatory program. OSM calculates the Title V grant amount according to a funding formula that includes, among other things, the total acreage that is subject to State regulatory jurisdiction. This proposed rulemaking would reduce the amount of land subject to State regulation, which could potentially result in a decrease the State's annual Title V regulatory funding. Based upon the Federal lands funding option that New Mexico has chosen, OSM anticipates that the reduction in grant funding would be approximately 4.15%.

B. 30 CFR Parts 740 and 746: General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands; Review and Approval of Mining Plans

OSM's regulations governing surface coal mining and reclamation operations on Federal lands are contained in 30 CFR Subchapter D: Parts 740, 745 and 746. Part 740 sets forth the general requirements for mining and reclamation operations on Federal lands. Part 745 sets forth requirements for the development, approval and administration of State-Federal cooperative agreements under section 523(c) of SMCRA. Part 746 specifies the process and requirements for review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal. For purposes of this rulemaking, only Parts 740 and 746 are proposed for revision for the reasons described below.

The regulations at 30 CFR Subchapter D currently apply exclusively to ''Federal lands.'' The term Federal lands is defined, in pertinent part, at Section 700.5 as ''any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. *It does not include Indian lands*'' (emphasis added).

This proposed rulemaking, together with the previously mentioned *Mescal* agreement, would create a situation where the allotted lands included within the McKinley Mine permit area would become Indian lands for purposes of SMCRA regulation, while the underlying coal would continue to be subject to the various requirements applicable to leased Federal coal under the MLA. Those requirements include statutory and regulatory provisions administered by BLM, as well as certain requirements administered by OSM. In OSM's regulations, provisions governing leased Federal coal can be found in the Federal lands program at 30 CFR Parts 740 and 746. Those requirements would continue to apply to the Federal coal leases at the McKinley Mine.

OSM is proposing a series of revisions to the regulations at Parts 740 and 746 that would recognize that responsibilities and requirements pertaining to leased Federal coal would continue to apply to Federal coal leases on Indian lands. Thus, in those instances where leased Federal coal underlies allotted lands, both the Indian lands program at Part 750 and the regulations at Parts 740 and 746 pertaining to leased Federal coal would apply. Specific proposed changes to Parts 740 and 746 are discussed below.

1. Section 740.1: Scope and Purpose

Section 740.1 currently states that Part 740 ''provides for the regulation of surface coal mining and reclamation operations on Federal lands.'' OSM is proposing to add rule language that would also recognize the applicability of Part 740 to the mining of leased Federal coal on Indian lands. This proposed change is meant to preclude any regulatory ambiguity that might arise concerning the continued applicability of the Federal lands program to leased Federal coal on allotted lands should those lands come to be defined as Indian lands.

2. Section 740.4: Responsibilities

The regulations at 30 CFR 740.4(b)(1)–(5) specify OSM's regulatory responsibilities for surface coal mining and reclamation operations on Federal lands. OSM is proposing to amend Section 740.4(b) by adding a new provision at the end of that section concerning the regulation of surface coal mining and reclamation operations on Indian lands containing leased Federal coal. The proposed rule language would provide for OSM regulation on such lands in accordance with the requirements of the Indian lands program at Part 750 and the applicable requirements of the Federal lands program as specified in a new Section 740.11(h) that is also being proposed as part of this rulemaking. (Section 740.11 currently consists of paragraphs (a)–(f). A new paragraph (g) has already been proposed in another rulemaking (62 FR 4836, 4859; January 31, 1997). A new paragraph (h) is being proposed as part of this rulemaking and will be discussed somewhat later in this preamble.)

3. Section 740.5: Definitions

Leased Federal Coal

Section 740.5 currently defines ''leased Federal coal'' as ''coal leased by the United States pursuant to 43 CFR part 3400, *except mineral interests in coal on Indian lands*'' (emphasis added). As noted earlier, the four Federal coal leases underlying allotted lands at the McKinley Mine are to remain in effect pursuant to the *Mescal* settlement until their expiration, relinquishment, or other termination. Under this proposed rulemaking, those allotments would be classified as Indian lands for purposes of SMCRA regulation, thereby creating at least one instance in which leased Federal coal would be located on Indian lands. Therefore, OSM is proposing to amend the definition of leased Federal coal by removing the phrase ''except mineral interests in coal on Indian lands.'' OSM is also proposing to replace the current cross-reference to ''43 CFR part 3400'' in the definition with a reference to ''43 CFR Group 3400'' in order to fully and accurately cite BLM's coal management regulations at 43 CFR Subchapter C. Those regulations consist of nine parts, and various subparts, all of which come under the general heading of ''Group 3400—Coal Management.''

Permit Application Package

The term ''permit application package'' is defined at Section 740.5 as:

> a proposal to conduct surface coal mining and reclamation operations on *Federal lands*, including an application for a permit, permit revision or permit renewal, all the information required by the Act, this subchapter, the applicable *State program*, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased Federal coal, the Mineral Leasing Act and its implementing regulations (emphasis added).

For the reasons noted above under the preamble discussion of leased Federal coal, and elsewhere in this preamble, OSM is proposing to amend the definition of permit application package so that it includes mining proposals on Federal lands *and* on Indian lands containing leased Federal coal. OSM is also proposing to replace the reference to the applicable ''State program'' with applicable ''regulatory program.'' The proposed rule language would bring the definition into conformity with the other changes to the Federal and Indian lands programs being proposed in this rulemaking. For clarity, OSM is also proposing a non-substantive change in which the various information requirements specified in the definition are grouped and listed in itemized form.

4. Section 740.11: Applicability

The regulations at 30 CFR 740.11(a)–(f) specify when and to what extent the Federal lands program applies to coal exploration and surface coal mining and reclamation operations on Federal lands in States with approved regulatory programs, with and without cooperative agreements, and in other situations. OSM is proposing to add a new paragraph at the end of Section 740.11 that would pertain specifically to surface coal mining and reclamation operations on Indian lands containing leased Federal coal. The proposed provision would specify the applicable regulatory requirements for mining operations on such lands, namely the Indian lands program at 30 CFR Part 750, the relevant provisions of Part 740, and Part 746. The various sections of Part 740 that are proposed for inclusion in the list of applicable provisions are those that either specify or reference requirements pertaining to leased Federal coal, or are permitting requirements that have no equivalent counterpart in the Indian lands program at Part 750. Part 746 is proposed for inclusion in its entirety because all of its provisions, namely the process and requirements for the review and approval of mining plans and mining plan modifications, apply to leased Federal coal. The proposed provision would be designated as paragraph (g) and would read as follows:

Where surface coal mining and reclamation operations are on Indian lands, as the term Indian lands is defined at § 700.5, and the lands include leased Federal coal, the Indian lands program at part 750 and the following provisions of this subchapter apply:

(1) Section 740.1;
(2) Sections 740.4(a)(1), (b)(1), (b)(6), (d)(1)–(5) and (d)(9);
(3) Section 740.5;
(4) Section 740.11(d);
(5) Sections 740.13(a)(1)–(2), (c)(1)–(3) and (d)(2);
(6) Sections 740.15(a) and (d)(1);
(7) Sections 740.19(a)(1)–(2) and (b)(2); and
(8) Part 746

The proposed rule language would recognize the Indian lands program as the applicable regulatory program for purposes of SMCRA compliance on Indian lands containing leased Federal coal, while also identifying the Federal lands program requirements that must be met to ensure that the mining of Federal coal on such lands is carried out in accordance with the Mineral Leasing Act, as amended, and other applicable statutes governing leased Federal coal.

5. Section 746.13: Decision Document and Recommendation on Mining Plan

The regulations at Section 746.13 specify the requirements that OSM must meet in preparing and submitting to the Secretary a decision document recommending approval, disapproval or conditional approval of the mining plan for leased Federal coal. Section 746.13(f) requires the mining plan recommendation to reflect the ''findings and recommendations of the regulatory authority with respect to the permit application and the State program.'' As discussed earlier in this preamble, Indian lands containing leased Federal coal would not be subject to the requirements of the State program, but would instead be regulated under the provisions of the Indian lands program at 30 CFR Part 750. Therefore, OSM is proposing to replace the reference to the State program in Section 746.13(f) with ''applicable regulatory program'' in order to provide the necessary flexibility in the rule language.

C. 30 CFR Part 750: Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

The regulations at 30 CFR Part 750 govern surface coal mining and reclamation operations on Indian lands and comprise the Federal program for Indian lands. OSM is proposing to amend the Indian lands program to the extent necessary to address the regulatory and jurisdictional issues arising from the proposed clarification of the definition of Indian lands and to avoid confusion in implementation of the *Mescal* settlement as it relates to the mining of leased Federal coal on allotted lands. The proposed revisions are intended to clarify the regulatory requirements and consultation procedures that would apply to surface coal mining and reclamation operations involving allotted lands, including such lands containing leased Federal coal, and to ensure the continuing and uninterrupted regulation of mining operations that presently include such lands.

1. Section 750.6: Responsibilities

Regulation of Leased Federal Coal on Indian Lands

The regulations at 30 CFR 750.6(a)–(d) set forth the regulatory responsibilities of OSM, BLM, MMS and BIA, respectively, on Indian lands, including the required consultation and interagency coordination procedures. BLM's responsibilities concerning coal exploration and mining operations are specified at Section 750.6(b)(1)–(4). Section 750.6(b)(1) concerns BLM's responsibility to review and approve, conditionally approve, or disapprove coal exploration and mining plans on Indian lands as provided in BIA's regulations at 25 CFR Chapter I or in specific Indian mineral agreements. OSM is proposing rule language that would also recognize BLM's continuing responsibility to administer the Mineral Leasing Act, as amended, and other applicable statutes, with respect to coal mining, production and resource recovery and protection operations on Federal coal leases and licenses, regardless of surface ownership, as provided in 43 CFR Chapter II, Group 3400. This would include the Federal coal underlying the individual Indian trust allotments included within the McKinley Mine permit area. The proposed amendment is not intended to make any substantive change, but rather to recognize that BLM's existing jurisdiction under the MLA and other laws governing Federal coal resources would not be affected by the proposed rule. The proposed provision would be designated as 30 CFR 750.6(b)(2), and the subsequent paragraphs in Section 750.6(b) would be renumbered accordingly.

Consultation and Coordination on Allotted Lands

The regulations at Section 750.6(d) specify BIA's consultation responsibilities with respect to surface coal mining and reclamation operations on Indian lands. Section 750.6(d)(1) requires BIA to consult directly with and provide representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands. The term ''Indian mineral owner'' is defined at Section 750.5 to include both individual Indians and Indian tribes who own 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. Thus, the definition would encompass individual Indian allottees. In addition, Section 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, permit rights or performance bonds.

As noted earlier in this preamble, one of the consequences of this proposed clarification to the definition of Indian lands would be a change in the consultation procedures for surface coal mining and reclamation operations involving allotted lands located within the Navajo consolidation area. Specifically, consultation with individual allottee surface and/or mineral owners would be required when mining and reclamation activities involve such allottees' lands. Such consultation would be appropriately carried out by BIA pursuant to 30 CFR 750.6(d)(1).

Because allotted lands within the Navajo land consolidation area could potentially contain non-coal resources of significance to the tribe, OSM would consult with the Navajo Nation as appropriate to ensure that any such resources are identified and the tribe's interests and concerns addressed. OSM would carry out such consultation with the tribe pursuant to 30 CFR 750.6(a)(4). That regulation requires OSM to 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 to assure operator compliance with such requirements.

As noted above, Section 750.6(d)(2) calls for BIA consultation with the affected tribe in reviewing and making recommendations to OSM concerning permit applications and other types of permitting actions, and performance bonds. However, that requirement is properly applied to lands held in trust for an Indian tribe; on allotted lands, where both the land (surface and/or mineral) ownership interest and the Federal trust relationship is with the individual allottees, BIA's responsibility to consult lies with the allottee land owners. Any tribal concerns related to mining operations on allotted lands would be addressed through OSM's consultation with the tribe in its capacity as the SMCRA regulatory authority on Indian lands.

The rule language at Section 750.6(d)(2) refers only to BIA's responsibility to consult with the affected tribe, and thus differs from Section 750.6(d)(1) which refers to BIA's responsibility to also consult with individual Indian mineral owners or other Indian land owners, as appropriate. Section 750.6(d)(2) is also inconsistent with this proposed rulemaking which calls for BIA to consult with Indian allottees when permitting actions for surface coal mining and reclamation operations involve allotted lands. Therefore, OSM is proposing to amend Section 750.6(d)(2) to refer to BIA's responsibility to consult with the affected tribe, Indian mineral owners, or other Indian land owners, as appropriate, prior to making recommendations to OSM concerning permit applications and performance bonds.

Section 750.6(d)(3) addresses BIA's responsibility to consult with the affected Indian tribe in reviewing mining plans and making recommendations to the Bureau of Land Management pursuant to BIA's regulations at 25 CFR 216.7. The regulations at 25 CFR Part 216 govern surface exploration, mining, and reclamation on Indian lands. The term ''mining plan,'' as used in those regulations, pertains specifically to Indian lands. It should not be confused with a mining plan for leased Federal coal, as used in OSM's Federal lands regulations at 30 CFR Parts 740 and 746, which is subject to a different set of statutory and regulatory requirements including the Mineral Leasing Act, as amended, and other applicable laws. Pursuant to 25 CFR 216.2, the regulations at Part 216 do not apply where minerals underlie lands ''the surface of which is not owned by the owner of the minerals.'' Prior to the *Mescal* settlement, the mineral estate for the vast majority of individual Indian trust allotments located within the Navajo consolidation area was federally owned, while the surface estate was owned by the allottees. However, with the issuance of supplemental trust patents to individual Indian allottees under the *Mescal* agreement, there is now the potential for surface coal mining operations, and associated mining plans, involving allottee-owned coal in the future. Therefore, OSM is proposing to amend the rule language at 30 CFR 750.6(d)(3) to specify BIA consultation with the affected tribe, Indian mineral owners, or other Indian land owners, as appropriate, in reviewing and making recommendations on mining plans on Indian lands.

2. Section 750.12: Permit Applications

Transfer of SMCRA Regulatory Jurisdiction on Allotted Lands

The regulations at 30 CFR 750.12 specify the applicable content and processing requirements for permit applications for surface coal mining operations on Indian lands. Under Section 750.12(c)(1), Part 774 applies to the processing of permit applications on Indian lands. This part specifies the requirements for permit revisions, permit renewals, and transfer, assignment or sale of permit rights. Under Section 774.11(b), the regulatory authority may, at any time, require reasonable revision of a permit to ensure compliance with the Act and the regulatory program.

OSM anticipates that the change in regulatory jurisdiction on allotted lands that would occur under this proposed rule would require us to invoke this provision at the McKinley Mine. Those lands are currently regulated under a State program permit issued by the New Mexico MMD, but would come under the purview of the Federal program for Indian lands as of the effective date of the rule change. Consequently, P&M would be required to submit to OSM a permit revision application incorporating the allotted lands portion of the mine into its Indian lands permit under the procedures described below.

Upon issuance of the final rule, OSM would send written notification to P&M, the Navajo Nation, New Mexico MMD, the Bureau of Indian Affairs, and the Bureau of Land Management of the imminent change in regulatory jurisdiction. The notification would advise P&M of the need to submit for OSM review a permit revision application incorporating the allotted lands currently under State permit at the McKinley Mine into its existing Federal permit. OSM would then review the application to determine whether any changes are necessary to bring the permit into compliance with the Federal program for Indian lands. If OSM determines that changes are necessary, the procedures of 30 CFR 750.12(c)(3)(ii) governing permit revisions on Indian lands would apply.

OSM invites comments on this proposed transition procedure, and is particularly interested in suggestions on how to minimize disruption to mine operations and the regulatory process during any transfer of jurisdiction. In addition, OSM is seeking comment on whether this procedure would require further changes to our regulations to include a provision analogous to 30 CFR 773.11(d)(1) which allows for continued operations under State program permits

when a Federal regulatory program supersedes an approved State program.

Indian Lands Containing Leased Federal Coal

OSM is proposing to amend Section 750.12(c) by adding a new paragraph pertaining specifically to Indian lands containing leased Federal coal. The proposed provision would reference the list of applicable regulatory requirements for such lands that OSM is proposing to include in the Federal lands program at 30 CFR 740.11(h) as part of this rulemaking. The proposed cross-reference to Section 740.11(h) would be designated as Section 750.12(c)(3), and the existing regulations at Section 750.12(c)(3) would be redesignated as Section 750.12(c)(4).

OSM is also proposing a change in the rule language at existing Section 750.12(c)(3)(i)(which would be redesignated as Section 750.12(c)(4)(i) under this proposed rulemaking). The regulations at Section 750.12(c)(3) prescribe special requirements for surface coal mining and reclamation operations on Indian lands. Section 750.12(c)(3)(i) concerns the transfer or assignment of leasehold interests on Indian lands and specifies that such transfers or assignments may be done ''only in accordance with 25 CFR parts 211 and 212.'' The regulations at 25 CFR Parts 211 and 212 govern leases for the development of, respectively, Indian tribal and individual Indian oil and gas, geothermal, and solid mineral resources. Thus, those regulations would not apply to Federal coal leases on Indian lands, including the four Federal coal leases underlying the allotted lands at the McKinley Mine. For Federal coal leases, any transfer or assignment of leasehold interests may be done only in accordance with BLM's regulations at 43 CFR Part 3453. Therefore, OSM is proposing to amend the rule language at what would be the newly designated Section 750.12(c)(4)(i) to reference 25 CFR Parts 211 and 212, as well as 43 CFR Part 3453, as applicable.

IV. Procedural Determinations

A. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

1. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The only geographic region where an economic impact would likely occur under the rule would be at the McKinley Mine in New Mexico. The direct and indirect economic impacts to the mine from the transfer of jurisdiction to OSM would extend only to the actual costs associated with submitting a permit revision application for those allotted lands that are currently regulated by the State of New Mexico. The cost would be extremely small in comparison to the size of the mine. The economic impacts of the rule with regard to AML fees were previously discussed in the preamble in section III.9.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule does not alter user fees or loan programs or the rights or obligations of their recipients. This rule would alter the allocation of AML fees that are collected from coal mining operations that include individual Indian trust allotments within their approved permit areas and are located within the Navajo Land Consolidation Area in New Mexico. Specifically, as of the effective date of the rule change, the 50% non-Federal share of AML fees derived from coal production on allotted lands within the consolidation area would be allocated to the Navajo Nation's portion of the AML fund, rather than to the State of New Mexico's portion of the fund. Only one mine in New Mexico would be affected by the rule at this time. Based upon current coal production figures at that mine, the amount of affected AML fees would be less than $500,000,000 annually. The rule could also affect the amount of annual grant monies that OSM provides to the State of New Mexico to support implementation of its SMCRA regulatory program because it would reduce the amount of land subject to State regulation, which could potentially decrease the State's annual regulatory funding. OSM anticipates that the reduction in grant monies would be about 4.15% of the State's yearly grant allocation.

4. The legal and policy issues raised in this rule are an expansion of issues previously raised during the implementation of SMCRA. The proposed rule asserts for the first time that specified allotted lands would be deemed to be Indian Lands. The State of New Mexico challenged OSM's 1984 regulations establishing the Federal program for Indian lands at 30 CFR Part 750. In response to that challenge, OSM agreed to issue a clarification of its 1984 regulatory preamble and disclaim any assertion that all individual allotments outside the boundaries of an Indian reservation were ''Indian lands'' for the purpose of SMCRA. *See Valencia Energy Co.*, 109 IBLA 59 (1989); and 53 FR 3992, 2993 (February 10, 1988). OSM has subsequently taken the position that this meant that OSM would address on a case-by-case basis whether allotments are ''Indian Lands.''

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. As previously discussed, the proposed rule would have an economic impact on only one coal mine and one Indian Tribe.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Does not have an annual effect on the economy of $100 million or more. The only geographic region where an economic impact will likely occur under the proposed rule would be in the vicinity of the McKinley Mine in New Mexico. More specifically, the Indian trust allotments (6,654 acres) in the McKinley Mine South Area permit would be deemed as Indian lands rather than private or Federal lands under the proposed rule and SMCRA regulatory jurisdiction on those lands would be transferred from the State of New Mexico to OSM as of the effective date of the proposed rule. OSM's regulatory jurisdiction on such lands would include the permitting, inspection and enforcement functions which are now performed by the State of New Mexico.

Currently, the McKinley Mine is owned and operated by Pittsburg & Midway. The direct or indirect economic impacts to P&M from the transfer of jurisdiction to OSM would extend only to the actual costs associated with submitting a permit revision application for those allotted lands that are now regulated by the

State of New Mexico. In addition, the productivity or employment in the local economy would not be affected solely due to the change of regulatory authority from State government to the Federal government. The proposed rule could potentially affect the amount of annual funding that OSM provides to the State of New Mexico to support the implementation of the State's Title V regulatory program under SMCRA. In determining the Title V grant amount, OSM uses a funding formula that includes, among other things, the total acreage that is subject to State regulatory jurisdiction. The proposed rulemaking would reduce the amount of land subject to State regulation, which could potentially result in a decrease in the State's annual Title V regulatory funding. Based upon the Federal lands funding option that New Mexico has chosen, OSM anticipates that the reduction in annual funding could be approximately 4.15 percent.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions for the reasons previously stated.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

D. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

E. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications.

F. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

G. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

H. Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* since it affects fewer than ten respondents.

I. National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final rule.

J. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, § 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.). (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Author

The principal author of this proposed rule is Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., N.W., Washington, D.C. 20240. Telephone: (202) 208–2661.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 740

Public lands, Mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 746

Public lands—mineral resources, Reporting and recordkeeping requirements, Surface mining, underground mining.

30 CFR Part 750

Indians—lands, Reporting and recordkeeping requirements, Surface mining.

Dated: February 11, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM is proposing to amend 30 CFR parts 700, 740, 746 and 750 as set forth below:

PART 700—GENERAL

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

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. In § 700.5, the definition of ''Indian lands'' is revised to read as follows:

§ 700.5 Definitions.

* * * * *

Indian lands means—

(a) All lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent or rights-of-way; and

(b) All lands including mineral interests held in trust for or supervised by an Indian tribe. Such lands include, but are not limited to, all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way

running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.

* * * * *

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

3. The authority citation for part 740 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

4. Section 740.1 is amended by adding a sentence at the end of the section to read as follows:

§ 740.1 Scope and purpose.

It also provides the process and requirements for the mining of leased Federal coal on Indian lands.

5. Section 740.4 is amended by removing the word ''and'' at the end of paragraph(b)(4), removing the period at the end of paragraph(b)(5) and adding a semicolon and the word ''and'' at the end of the same paragraph, and adding a new paragraph (b)(6) to read as follows:

§ 740.4 Responsibilities.

* * * * *

(b) * * *

(6) When Federal coal is located on Indian lands, as the term Indian lands is defined at § 700.5 of this chapter, regulating surface coal mining and reclamation operations in accordance with the Indian lands program at part 750 of this chapter and the requirements in § 740.11(h).

* * * * *

6. In paragraph (a) of § 740.5, the definitions of ''Leased Federal coal'' and ''Permit application package'' are revised to read as follows:

§ 740.5 Definitions.

(a) * * *

Leased Federal coal means coal leased by the United States under 43 CFR Group 3400.

* * * * *

Permit application package means a proposal to conduct surface coal mining and reclamation operations on Federal lands or on Indian lands containing leased Federal coal, including the following materials:

(1) An application for a permit, permit revision or permit renewal;

(2) All the information required by the Act, this subchapter, the applicable regulatory program, any applicable cooperative agreement and all other applicable laws and regulations; and

(3) For leased Federal coal, the information required by the Mineral Leasing Act and its implementing regulations.

* * * * *

7. In § 740.11, paragraph (h) is added to read as follows:

§ 740.11 Applicability.

* * * * *

(h) Where surface coal mining and reclamation operations are on Indian lands, as the term Indian lands is defined at § 700.5 of this chapter, and the lands include leased Federal coal, the Indian lands program at part 750 of this chapter and the following provisions of this subchapter apply:

(1) Section 740.1;

(2) Sections 740.4(a)(1), (b)(1), (b)(6), (d)(1) through (5) and (d)(9); (3) Section 740.5;

(4) Section 740.11(d);

(5) Sections 740.13(a)(1), (2), (c)(1) through (3) and (d)(2);

(6) Sections 740.15(a) and (d)(1);

(7) Sections 740.19(a)(1), (2) and (b)(2); and

(8) Part 746.

PART 746—REVIEW AND APPROVAL OF MINING PLANS

8. The authority citation for part 746 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

9. In § 746.13, paragraph (f) is revised to read as follows:

§ 746.13 Decision document and recommendation on mining plan.

* * * * *

(f) The findings and recommendations of the regulatory authority with respect to the permit application and the applicable regulatory program; and

* * * * *

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

10. The authority citation for part 750 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

11. In § 750.6, paragraphs (b)(2) through (4) are redesignated as (b)(3) through (5), a new paragraph (b)(2) is added, and paragraphs (d)(2) and (3) are revised to read as follows:

§ 750.6 Responsibilities.

* * * * *

(b) * * *

(2) Administering the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and other applicable statutes, with respect to coal mining, production, and resource recovery and protection operations on Federal coal leases and licenses, regardless of surface ownership, as provided in 43 CFR Chapter II, Group 3400;

* * * * *

(d) * * *

(2) After consultation with the affected tribe, Indian mineral owners, or other Indian land owners, as appropriate, 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, Indian mineral owners or other Indian land owners, as appropriate, reviewing and making recommendations to the Bureau of Land Management under 25 CFR 216.7.

12. In § 750.12, paragraph (c)(3) is redesignated as paragraph (c)(4), a new paragraph (c)(3) is added, and the last sentence of newly designated paragraph (c)(4)(i) is revised, to read as follows:

§ 750.12 Permit applications.

* * * * *

(c) * * *

(3) On Indian lands containing leased Federal coal, the requirements of § 740.11(h) of this chapter apply.

(4) * * *

(i) * * * Leasehold interests may be transferred or assigned in accordance with 25 CFR parts 211 or 212 or 43 CFR part 3453, as applicable.

* * * * *

[FR Doc. 99–4153 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–05–P