

SUBCHAPTER E--INDIAN LANDS PROGRAM

PART 750--REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON

INDIAN LANDS

Sec.

750.1 Scope.

750.5 Definitions.

750.6 Responsibilities.

750.10 Information collection.

750.11 Permits.

750.12 Permit applications.

750.13 Small operator assistance.

750.14 Lands designated unsuitable for mining by Act of Congress.

750.15 Coal exploration.

750.16 Performance standards.

750.17 Bonding.

750.18 Inspection and enforcement.

750.19 Blaster certification.

750.21 Coal extraction incidental to the extraction of other materials.

750.25 Permit fees.

Authority: Pub. L. 95-87 (30 U.S.C. 1201 et seq., as amended); and Pub. L. 100-34.

Sec. 750.1 Scope.

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

Sec. 750.5 Definitions.

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

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

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

Federal program means the Federal program for Indian lands.

Indian mineral owner means (1) any individual Indian or Alaska native who owns land or mineral interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or (2) any Indian tribe, band, native, pueblo, community, rancheria, colony, or other group which owns land or mineral interest in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. This definition does not include owners of lands patented to a village or regional corporation pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203.

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

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

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

Regulatory authority means the Office of Surface Mining.

Sec. 750.6 Responsibilities.

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- (a) OSM shall:
 - (1) Be the regulatory authority on Indian lands;
 - (2) After consultation with the Bureau of Indian Affairs and, as applicable, with the Bureau of Land Management, conditionally approve, approve, or disapprove applications for permits, permit renewals, or permit revisions for surface coal mining operations on Indian lands, and applications for the transfer, sale, or assignment of such permit rights on Indian lands;
 - (3) Conduct inspection and enforcement activities with respect to surface coal mining and reclamation operations on Indian lands;
 - (4) Consult with the BIA and the affected tribe with respect to special requirements relating to the protection of noncoal resources of the area affected by surface coal mining and reclamation operations, and assure operator compliance with such special requirements;
 - (5) Consult with the Bureau of Land Management concerning requirements relating to the development, production, and recovery of mineral resources on Indian lands;
 - (6) Approve environmental protection performance bonds and liability insurance required for surface coal mining and reclamation operations on Indian lands but not the production royalty bond; and
 - (7) Ensure compliance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., with respect to permitting actions for surface coal mining and reclamation operations on Indian lands.
- (b) The Bureau of Land Management is responsible for:
 - (1) Receiving, reviewing, and conditionally approving, approving, or disapproving coal exploration plans and mining plans, as provided in 25 CFR Chapter I or in specific Indian mineral agreements;

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

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

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

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

(d) The Bureau of Indian Affairs is responsible for:

(1) Consulting directly with and providing representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands;

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

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

Sec. 750.10 Information collection.

FEDERAL REGISTER CITE: 59 FR 43414 (43420)

PUBLISHED DATE: 08/23/94

EFFECTIVE DATE: 09/22/94

The Office of Management and Budget has determined that the information collection requirements contained in 30 CFR part 750 do not require approval under the Paperwork Reduction Act.

Sec. 750.11 Permits.

FEDERAL REGISTER CITE: 54 FR 13814 (13822)

PUBLISHED DATE: 04/05/89

EFFECTIVE DATE: 05/09/89

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

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

(c) Surface coal mining operations authorized prior to the effective date of this subchapter may be conducted beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present:

(1) An application for a permit to conduct those operations under this part has been made within 2 months of the implementation of the Federal program for Indian lands;

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

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

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

Sec. 750.12 Permit applications.

FEDERAL REGISTER CITE: 55 FR 29536 (29548)

PUBLISHED DATE: 07/19/90

EFFECTIVE DATE: 07/20/90

(a) Each application for a permit to conduct surface coal mining operations on lands subject to this part shall be accompanied by fees in accordance with Sec. 750.25 of this part.

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

(c)(1) The following requirements of Subchapter G of this Chapter shall govern the processing of permit applications on Indian lands, except as specified in Paragraph (c)(2) or (c)(3) of this Section:

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

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

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

(i) Approval of a transfer, assignment, or sale of rights granted under a permit shall not be construed as approval of a transfer or assignment of a leasehold interest. Leasehold interests may be transferred or assigned only in accordance with 25 CFR Parts 211 and 212.

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

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

(B) OSM shall determine if the application for revision is complete and if the proposed revision is significant. OSM shall consider the following factors as well as other relevant factors in determining the significance of a proposed revision:

- (1) Changes in production or recover ability of the coal resource;
- (2) The environmental effects;
- (3) The public interest in the operation, or likely interest in the proposed revision; and
- (4) Possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, or cultural resources.

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

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

(d) The permit application package shall also contain:

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

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

(i) The description of the proposed surface coal mining and reclamation operation with respect to:

- (A) Increases in employment, population, and revenues to public and private entities; and
- (B) The ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

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

(iii) A statement, including maps and ownership data as appropriate, of any cultural or historical site listed on the National Register of Historic Places within the permit and adjacent areas of the proposed surface coal mining and reclamation operation.

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

(v) A description of compliance with Federal laws aimed at protecting cultural resources on Indian lands.

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

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

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

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

Sec. 750.13 Small operator assistance.

FEDERAL REGISTER CITE: 49 Red. Reg. 38462 (38479)

PUBLISHED DATE: 09/28/84

EFFECTIVE DATE: 09/28/84

Part 795 of this Chapter is applicable on Indian lands.

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

FEDERAL REGISTER CITE: 49 FR 38462 (38479)

PUBLISHED DATE: 09/28/84

EFFECTIVE DATE: 09/28/84

Part 761 of this Chapter is applicable on Indian lands.

Sec. 750.15 Coal exploration.

FEDERAL REGISTER CITE: 49 FR 38462 (38479)

PUBLISHED DATE: 09/28/84

EFFECTIVE DATE: 09/28/84

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

Sec. 750.16 Performance standards.

FEDERAL REGISTER CITE: 59 FR 43414 (43420)

PUBLISHED DATE: 08/23/94

EFFECTIVE DATE: 09/22/94

After OSM issues a permit under this part, a person conducting surface coal mining operations on Indian lands shall do so in accordance with Parts 816, 817, 819, 822, 823, 824, 827, and 828 of this Chapter. Prior to that time, the person conducting surface coal mining and reclamation operations shall adhere to the performance standards of 30 CFR Chapter VII, Subchapter B.

Sec. 750.17 Bonding.

FEDERAL REGISTER CITE: 49 FR 38462 (38479)

PUBLISHED DATE: 09/28/84

EFFECTIVE DATE: 09/28/84

Subchapter J of this title is applicable on Indian lands.

Sec. 750.18 Inspection and enforcement.

FEDERAL REGISTER CITE: 53 FR 3664 (3674)

PUBLISHED DATE: 02/08/88

EFFECTIVE DATE: 03/09/88

(a) Parts 842, 843, 845 and 846 of this chapter and the hearings and appeals procedures of 43 CFR Part 4 are applicable on Indian lands.

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

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

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

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

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

Sec. 750.19 Blaster certification.

FEDERAL REGISTER CITE: 51 FR 19444 (19461)

PUBLISHED DATE: 05/29/86

EFFECTIVE DATE: 06/30/86

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of Sections 816.61(c) and 817.61(c) and Part 955 of this chapter.

Sec. 750.20 Adoption of Indian coal lease terms.

FEDERAL REGISTER CITE: 54 FR 22182 (22188)

PUBLISHED DATE: 05/22/89

EFFECTIVE DATE: 06/21/89

[Removed]

Sec. 750.21 Coal extraction incidental to the extraction of other materials.

FEDERAL REGISTER CITE: 54 FR 52092 (52123)

PUBLISHED DATE: 12/20/89
EFFECTIVE DATE: 04/01/90

Part 702 of this chapter is applicable on Indian lands.

Sec. 750.25 Permit fees.

FEDERAL REGISTER CITE: 55 FR 29536 (29548)
PUBLISHED DATE: 07/19/90
EFFECTIVE DATE: 07/20/90

(a) Applicability. An applicant for a new permit to conduct surface coal mining operations on lands subject to this part shall submit to OSM fees in the amounts set out in paragraph (d) of this section. For applications submitted prior to the effective date of this rule, fees shall apply only for stages of OSM review begun on or after the effective date. The applicant shall either submit all applicable fees with the permit application, or by stage of review as follows:

(1) Administrative completeness review. An applicant who pays by stage of review shall submit the administrative completeness review fee with the permit application.

(2) Technical review. Following receipt from OSM of a notice of administrative completeness, an applicant who pays by stage of review shall submit the technical review basic fee, plus the per-acre fee for each acre of disturbed area or fraction thereof to be included in the permit area.

(3) Permit issuance. Following receipt from OSM of a notice of technical adequacy, an applicant who pays by stage of review shall submit the decision document fee.

(b) Refund of fees. (1) Upon receipt of a written request from an applicant, OSM will refund any permit fees paid under this section for a permit application when OSM denies the permit:

(i) On the basis of information concerning endangered or threatened species or their critical habitats or information concerning cultural or historical resources, where such information was not available prior to submission of the permit application;

(ii) Because subsequent to submittal of a permit application, the lands contained in the permit application are declared unsuitable for mining under subchapter F of this chapter; or

(iii) Because subsequent to submittal of a permit application, the applicant is denied valid existing rights to mine under part 761 of this chapter where such rights are required for surface coal mining operations on the lands contained in the permit application.

(2) An applicant may file a written request for withdrawal of a permit application and a refund of fees in accordance with paragraph (b)(3) of this section.

(3) OSM will, upon receipt of written request for withdrawal of a permit application, cease processing of that application. If requested, OSM will refund fees paid by the applicant for the withdrawn application as follows:

(i) Any fees for a stage of OSM review not yet begun will be refunded;

(ii) Where technical review has begun, partial refund will be made of any technical review fee amounts remaining after deduction of actual costs incurred for that technical review. Costs to process the withdrawal may also be deducted.

(4) No interest will be paid on refunded fees.

(c) Form of payment. All fees due under this section shall be submitted to OSM by the applicant in the form of a certified check, bank draft or money order, payable to Office of Surface Mining.

(d) Fee schedule for a new permit.

Administrative completeness review \$ 250.00

Technical review:

Basic fee 1,350.00

Fee per acre of disturbed area in
permit area:

First 1,000 acres 13.50/acre

Second 1,000 acres 6.00/acre

Third 1,000 acres 4.00/acre

Additional acres 3.00/acre

Decision document 2,000.00