

FEDERAL REGISTER: 54 FR 8982 (March 2, 1989)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM).

30 CFR Parts 773, 778, and 843

Requirements for Surface Coal Mining and Reclamation Permit Approval;
Ownership and Control Information; Reporting of Violations

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is revising its regulations governing the requirements for an application for a permit to conduct surface coal mining operations. This rule will require a permit applicant to submit more detailed information on persons who own or control it, and will revise the requirements for reporting violations. The rule also will require a regulatory authority to make its decision to approve or disapprove a permit application on the basis of up-to-date information concerning the compliance record of the applicant and related persons. The revisions are needed to conform the permit application requirements with changes in the permitting process and to insure that permits are issued based on current compliance review information.

EFFECTIVE DATE: April 3, 1989.

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SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Rule
- III. Discussion of Public Comments
- IV. Procedural Matters

I. BACKGROUND

This rule conforms the requirements for an application for a permit to conduct surface coal mining operations with related changes in the permit review process. On October 3, 1988 (*53 FR 38868*) OSMRE published a final rule which amended its regulations dealing with the review and approval of permit applications. That rule added a definition of the terms "owned or controlled" and "owns or controls" as these concepts are used in section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), *30 U.S.C. 1201* et seq., and expanded the scope of the compliance review which a regulatory authority is required to make prior to the approval of a permit application.

This rule will require a permit applicant to include in his or her application detailed information on the owners and controllers of related operations, and to update that information immediately prior to the issuance of a permit. The rule also will require a regulatory authority to use the updated information in making a final decision to approve or disapprove the application.

The information reported under this rule will provide an essential part of the data contained in OSMRE's computer-based Applicant/Violator System, which processes multiple sources of applicant and violation information to match applicants and their owners and controllers to violators of the Act and its implementing regulatory programs. It is important that the information submitted pursuant to this rule be as complete and up-to-date as is reasonably possible to insure a thorough and accurate review of the compliance record of the permit applicant and related persons prior to making a decision on whether to issue a permit.

The proposed rule to amend 30 CFR 773.15(e) was published on July 16, 1986 (*51 FR 25822*). The proposed rule to amend 30 CFR 773.17, 778.13 and 778.14 was published on May 28, 1987 (*52 FR 20032*). No request was received for

a public hearing and none was held. The two proposals are being adopted together because their information reporting requirements are interrelated.

II. DISCUSSION OF THE RULE

The rule language in the proposed rule published on May 28, 1987 has been modified to clarify the reporting requirements in response to comments and to break them into logical components. Any substantive changes from the proposed rule are noted in the preamble discussions of the various sections.

SECTION 773.15(e) -- FINAL COMPLIANCE REVIEW

Under 30 CFR 773.15(b)(1), a regulatory authority may not issue a permit to an applicant if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or certain other environmental laws and regulations. Experience has shown that the time that elapses between the submission of an application and the issuance of the permit typically is several months at a minimum. Information submitted with the application may become dated by the time of permit issuance, thus making it impossible for the regulatory authority to make an accurate compliance review under Section 773.15(b)(1).

This rule adds to Section 773.15 a new paragraph (e) to require that before a permit is issued the regulatory authority reconsider its initial Section 773.15(b)(1) compliance review in light of any new information submitted pursuant to Sections 778.13(i) and 778.14(d) of this rule, which are discussed subsequently. If the applicant fails or refuses to respond as required, the regulatory authority will be unable to make the final compliance review required by Section 773.15(e) and a permit will not be issued. The final compliance review based on this updated information will insure that the regulatory authority makes an accurate permitting decision under Section 773.15(b)(1). Authority for this section is contained in sections 101, 102, 201(c)(1), 201(c)(2), 412(a), 501(b), 504, 505, 507(b)(4), 510 (a), (b) and (c), 511, 518, 701(16) and 701(19) of the Act.

The proposed rule, published on July 16, 1986, would have added paragraphs (e)(1)(i), (e)(1)(ii) and (e)(2) to Section 773.15. Proposed paragraphs (e)(1)(i) and (e)(1)(ii) have been adopted in this rule as Sections 778.13(i) and 778.14(d), respectively, and are discussed later in this preamble. Proposed Section 773.15(e)(2) has been adopted in this rule as Section 773.15(e).

SECTION 773.17(i) – PERMIT CONDITION

Section 773.17(i) is a new permit condition requiring the submission, correction or update of certain information after the issuance of a cessation order. It applies to all permits to conduct surface coal mining operations, including those issued prior to the adoption of this rule.

Section 773.17(i) will require that within thirty days of the issuance of a cessation order under 30 CFR 843.11, or the State program equivalent, the permittee of the surface coal mining and reclamation operation for which the cessation order was issued shall either submit, correct or update and furnish to the regulatory authority that issued the permit, the information required by Section 778.13(c) of this rule concerning the identity of persons who own or control the permittee. The information must be current to the date the cessation order was issued. If there has been no change in the information previously submitted, the permittee must notify the regulatory authority of that fact in writing. The regulatory authority will enter any new information into the Applicant/Violator System, which will insure that the data in the System is current.

A permittee's failure to comply with this permit condition will result in appropriate enforcement action by the regulatory authority. The obligation to furnish the updated information applies even if the cessation order is under appeal. This obligation is consistent with 43 CFR 4.1116, which states that except where temporary relief is granted pursuant to section 525(c) or 526(c) of the Act, cessation orders issued under the Act shall remain in effect during the pendency of review before an administrative law judge or the Interior Board of Land Appeals. If temporary relief from a cessation order is granted, the permittee need not comply with the permit condition as long as the temporary relief is in effect.

The proposed rule would have required that this information be updated and furnished to the regulatory authority on an annual basis. However, once a permit is issued the updated information is needed only if a violation which would

require that a new permit be denied occurs and remains uncorrected. In response to comments objecting to the burden of information submittal, OSMRE has decided to require the information update at the issuance of a cessation order, which is such a violation. This will eliminate a superfluous reporting obligation for the majority of permittees who operate in accordance with their permits. If a notice of violation is issued, timely abatement of the violation will avoid not only the issuance of a failure-to-abate cessation order, but also the obligation to submit updated information on owners and controllers. In this manner, the commenters' concern over the amount of information that must be submitted is partially alleviated. The rule will insure that the regulatory authority obtains the names of the owners and controllers of the permittee at the time a cessation order is issued in order to withhold the issuance of new permits to such persons if the underlying violation remains unabated.

SECTION 778.10 -- INFORMATION COLLECTION

Section 778.10 of the rule concerns the information collection requirements in 30 CFR Part 778 including approval by the Office of Management and Budget (OMB) to collect the information and the clearance number assigned by OMB. This rule revises Section 778.10 by deleting the reference to clearance number 1029-0037. As stated in Section 778.10, the clearance number assigned by OMB to the information collection requirements in Part 778 is 1029-0034.

SECTION 778.13 -- IDENTIFICATION OF INTERESTS

As stated in the May 28, 1987 proposed rule, the information reporting requirements in this final rule have been conformed as necessary to the recently promulgated final definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5.

Section 778.13(b) of the rule will require each applicant for a permit to conduct surface coal mining operations to include in his or her application the name, address, telephone number, and, as applicable, the employer identification number of the applicant, the applicant's resident agent who will accept service of process and the person who will pay the abandoned mine land reclamation fee. Section 778.13(b) also requests the social security numbers of the above persons, but indicates that the disclosure of any social security number is voluntary.

Section 7(a) of the Privacy Act of 1974, 88 Stat. 1896, specifies that it shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his or her social security number unless the disclosure is required by Federal law or was required under statute or regulation prior to January 1, 1975. Since SMCRA does not specifically require the disclosure of an individual's social security number, and since the information was not required prior to January 1, 1975, no benefit, right or privilege, including a permit to conduct a surface coal mining operation, may be denied for failure to disclose a social security number under this rule.

Section 7(b) specifies that when an individual is asked to disclose his or her social security number, the individual shall be told whether the requirement is mandatory or voluntary. OSMRE is requesting the voluntary disclosure of an individual's social security number pursuant to the authority granted under sections 201 (c)(1) and (c)(2) of the Act. The information will be used to process permit applications and to perform the compliance review required by section 510(c) of the Act and 30 CFR 773.15(b)(1). This exemption from mandatory disclosure applies only to a social security number and not to an employer identification number, which is the taxpayer identification number for business entities such as corporations and partnerships, and for sole proprietors if they pay wages to one or more employees. The submission of the employer identification number is mandatory under this rule.

The requirement in Section 778.13(b) of this rule to supply the name of the person who will pay the abandoned mine land reclamation fee is in addition to the requirement in Section 778.13(c) to list the operator. Section 402(a) of the Act requires that an operator of a surface coal mining and reclamation operation pay the reclamation fee required by the Act. Experience has shown that often the reclamation fee is paid for the operator by agents such as attorneys, trustees, accounting firms, banks or other companies, or by the permittee if different from the operator. Furnishing the name of the person paying the reclamation fee will assist OSMRE in collecting the money and arranging for audits when necessary. Supplying the name of the person who will actually pay the reclamation fee does not in any way alter the legal obligation of other persons responsible for its payment.

As originally proposed, paragraph (b) requested the social security number or taxpayer identification number of the applicant, the operator, the applicant's resident agent, the person who will pay the abandoned mine land reclamation fee, and any contractor who will conduct the surface coal mining and reclamation operation. Since a taxpayer identification number can be either a social security number or an employer identification number, OSMRE has substituted the term "employer identification number" for the term "taxpayer identification number" in order to eliminate any confusion.

The final rule requests the disclosure of both a social security number and an employer identification number. OSMRE is requesting both numbers because of the possibility that a person may have used a social security number on some occasions and an employer identification number on others. Requesting both numbers will help to insure that the data in the Applicant/Violator System is complete. A similar change has been made in paragraph (c).

The reference in proposed Section 778.13(b) to the operator, and the requirement to furnish information concerning the operator, have been transferred to paragraph (c) of the final rule.

Proposed Section 778.13(b) also requested the name of any contractor who will conduct the surface coal mining and reclamation operation. In the final rule, the requirement to furnish information concerning contract mining operations has been transferred to paragraph (c).

Final Section 778.13(c) will require the applicant to submit the following information, as applicable, for any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 30 CFR 773.5:

- (1) The person's name, address, social security number, and employer identification number;
- (2) The person's ownership or control relationship to the applicant, including the percentage of ownership and location in the organizational structure;
- (3) The title of the person's position, date position was assumed, and when submitted under Section 773.17(i) of this rule, the date of departure from the position;
- (4) Each additional name and identifying number, including, employer identification number, Federal or State permit number and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and
- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

Under the referenced definition in 30 CFR 773.5 the permit applicant must furnish the above information for all: (1) Operators; (2) officers, directors, and any other persons who perform a function similar to an officer or director; (3) persons having the ability to commit the financial or real property assets or working resources of an entity; (4) general partners; (5) shareholders owning of record a ten percent or greater interest; (6) persons owning or controlling the coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive such coal after mining or having authority to determine the manner in which the proposed surface coal mining and reclamation operation is to be conducted; (7) persons who have any other relationship with the permit applicant which gives them authority directly or indirectly to determine the manner in which the proposed surface coal mining operation is to be conducted; and (8) persons who own or control the persons specified in paragraphs (1) through (7), either directly or indirectly through intermediary entities.

The requirements to list "persons having the ability to commit the financial or real property assets or working resources of an entity," and "persons owning or controlling the coal to be mined * * *" have been added to the final rule because under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5 those persons are presumed to own or control the permit applicant. The addition was necessary in order to conform these information reporting requirements with the definition.

Like the proposed rule, the final rule requires a permit applicant to report both direct and indirect ownership and control relationships. As explained in the October 3, 1988 final rule (53 FR 38868) defining "owned or controlled" and

"owns or controls," the ten percent ownership presumption applies at each level of a business structure. If a ten percent or greater ownership interest exists at any level, that interest must be reported along with the controllers at that level. For example, if company "A" owned ten percent of company "B," and company "B" owned ten percent of company "C," and company "C" owned ten percent of the applicant, the permit application must list companies "A," "B" and "C" along with the controllers of companies "A," "B" and "C." However, if company "A" owned ten percent of company "B", and company "B" owned nine percent of company "C," and company "C" owned ten percent of the applicant, the permit application would be required to list only company "C" and its controllers. The permit applicant would not be required to list company "A" or company "B" because the ownership interest between company "B" and company "C" was less than ten percent.

If the operator is a business entity and a subsidiary of another corporation, then the operator, its owners and controllers and the owners and controllers of the parent corporation must be reported by the permit applicant. The same also applies to anyone owning or controlling the coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining and reclamation operation. If that person is a business entity and a subsidiary of another corporation, then the owners and controllers of the parent corporation must be reported by the permit applicant, along with an explanation of how each person is linked in the chain of ownership or control.

The requirement of Section 778.13(c) to furnish information on anyone owning or controlling the coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining and reclamation operation does not apply to persons who receive coal as an in-kind royalty payment. However, simply labeling the receipt of coal as in-kind royalty payments will not automatically exempt a person or operation from the reporting requirements of this section if the in-kind payment is more than a simple royalty or if the recipient otherwise controls the conduct of the surface coal mining operation.

Under final Section 778.13(c)(2), the permit applicant must explain each identified person's ownership or control relationships to the applicant, including the percentage of ownership and the location of the owner or controller in the organizational structure. In the example given above, if company "A" owns ten percent of company "B," and company "B" owns ten percent of company "C," and company "C" owns ten percent of the applicant, the permit application must list companies "A," "B" and "C" along with the controllers of "A," "B" and "C", and must clearly indicate that "A" owns "B," and that "B" owns "C". The applicant must also furnish the percentage of ownership at each level, and when listing officers, directors, general partners, and other persons required to be reported, indicate the business entity they work for. All of the information must be furnished in a manner that will enable the regulatory authority to precisely determine the organizational structure of the applicant and its owners and controllers.

In the proposed rule at Section 778.13(d), OSMRE requested the "permit or application numbers or other identifiers" for all current and previous coal mining permits in the United States during the five year period preceding the date of the application. In the final rule, OSMRE has reworded this requirement to "Federal or State permit number, and MSHA number with date of issuance." OSMRE has specifically included the MSHA number here and elsewhere in the final rule so that there is no doubt the number must be included in the permit application. The date of issuance of the MSHA number is being asked for because MSHA reassigns previously issued numbers. If a violation is linked to a particular MSHA number and the number is later reassigned, the date the number was reassigned will allow the regulatory authority to determine that the current site should not be associated with the prior violation.

Final Section 778.13(d) will require for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 30 CFR 773.5, the operation's:

(1) Name, address, identifying numbers, including employer identification number, the Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including the percentage of ownership and the location in the organizational structure.

Section 778.13(i) of the final rule requires that after an application has been approved but before the permit to conduct a surface coal mining operation is issued, the applicant shall, as applicable, bring up to date, correct, or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (d). If the applicant fails or refuses to submit the information required under Section 778.13(i), the regulatory authority will not issue the permit. The updated information will enable the regulatory authority to make an accurate Section 773.15(b)(1) compliance review and to take appropriate action.

This provision was proposed on July 16, 1986 (*51 FR 25828*) as Section 773.15(e)(1)(i). It has been codified in the final rule in Section 778.13(i) so that the obligation to update information will be located with the requirement for the information that must be updated.

Under Section 778.13(j), a permit applicant will be required to submit the information required by Sections 778.13 and 778.14 in any prescribed format that is issued by OSMRE. In the final rule, OSMRE has substituted the term "format" for the term "form." OSMRE has made the substitution to allow for the electronic transfer of data if that can be done in a manner compatible with the operation of the Applicant/Violator System.

For the present OSMRE contemplates use of a standard form as the prescribed format. If a standard form is issued, use of the form will be required by all permit applicants when submitting the information regardless of whether the permit application is filed with OSMRE or a State regulatory authority. The form will cover only the information required by Sections 778.13 and 778.14, and will be in addition to any permit application forms required by any of the State regulatory authorities.

Use of a standard form should facilitate the input of legal, financial and compliance data into the Applicant/Violator System and help reduce errors when that data is transferred from a permit application to the computer. It should also prove helpful to those applying for permits because it will indicate what information must be furnished pursuant to the regulations. OSMRE will state on any forms requesting a social security number that the submission of a social security number is voluntary. Development and use of any such form will not limit any additional information collection requirements of any approved program.

SECTION 778.14 -- VIOLATION INFORMATION

Section 778.14(c) will require a permit applicant to submit a list of all violation notices received by the applicant and a list of all cessation orders and air and water quality violation notices received by any surface coal mining operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, during the three year period preceding the application date. The list must cover violations of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection. The lists also must contain any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the date of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency. The purpose of this information is to provide the data necessary to perform the compliance review required by section 510(c) of the Act and 30 CFR 773.15(b)(1) prior to making a final decision on whether to issue a permit.

A violation notice, as defined in 30 CFR 701.5, includes any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. While all notices of violation (NOV's) are violation notices, not all violation notices are NOV's. For example, a violation notice may also be a cessation order issued by a regulatory authority or a notice of noncompliance issued by the Environmental Protection Agency. Under Section 778.14(c), the permit applicant must list all violation notices, including NOV's, cessation orders, notices of noncompliance, and other citations, regardless of terminology, for any violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection in connection with any surface coal mining operation. For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant only cessation orders and air and water quality violation notices must be reported.

The proposed rule would have required the date of issuance of the violation notice, the name of the person to whom the violation notice was issued, and the issuing regulatory authority department or agency. In the final rule, OSMRE is also requesting any identifying numbers, including the Federal or State permit number and MSHA number associated with the operation, and the dates of issuance of the violation notice and MSHA number. This additional information will assist the regulatory authority in linking a violation notice to a particular mine site and its owners and controllers.

The requirement in the prior regulations to list violation notices, including NOV's, received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant has been deleted for two reasons. First, the information concerning NOV's incurred by any subsidiary, affiliate, or persons controlled by or under common control with the applicant is not required by the Act and is not needed in view of a presumption contained in revised 30 CFR 773.15(b)(1). That presumption holds that in the absence of a failure-to-abate cessation order an NOV is presumed to be in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation. It is because of the presumption that cessation orders but not NOV's must be reported for any surface coal mining operation owned or controlled by the applicant or by any person who owns or controls the applicant. In spite of the presumption, all NOV's received directly by the applicant must still be reported under revised Section 778.14(c) because section 510(c) of the Act requires that an application list all NOV's incurred directly by the applicant.

The second reason for revising the previous requirement to list violation notices "received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant" was the desire of OSMRE to eliminate confusion and conform the scope and language of the persons about whom information must be submitted with the coverage of the compliance review requirements of 30 CFR 773.15 (b)(1) and (b)(3). As revised on October 3, 1988 (*53 FR 38868*), those sections do not use the terms "subsidiary," "affiliate" or "common control." Instead they refer to operations "owned or controlled by either the applicant or by any person who owns or controls the applicant."

Section 778.14(d) of the rule requires that after a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall, as applicable, bring up to date, correct or indicate that no change has occurred in the information previously submitted under Section 778.14(c). If the applicant fails or refuses to submit the information required under Section 778.14(d), the regulatory authority will not issue the permit. The updated information will enable the regulatory authority to make an accurate Section 773.15(b)(1) compliance review.

Section 778.14(d) was proposed on July 16, 1986 (*51 FR 25828*) as Section 773.15(e)(1)(ii). It has been codified in the final rule in Section 778.14(d) so that the requirement to update information will be located with the requirement to provide the information that must be updated.

SECTION 843.11 -- CESSATION ORDERS

Section 843.11(g) required that where OSMRE is the regulatory authority, within sixty days of the issuance of a cessation order, OSMRE must notify all owners and controllers identified pursuant to 30 CFR 778.13(c) that the cessation order has been issued and that they have been identified as owners or controllers of the violator.

As described earlier in this preamble, Section 773.17(i) of the rule requires a permittee to submit to the regulatory authority within thirty days after a cessation order is issued, updated information on its owners and controllers. Upon receipt of this information, OSMRE will send the notification required by Section 843.11(g). If updated information is not received, OSMRE will send the notice to the persons currently in its records as owners or controllers.

OSMRE has added this provision to the final rule for three reasons. First, notification to the owners and controllers will insure that they are aware of the violation, and that unless the violation is abated their names will be linked to the violation in the Applicant/Violator System. Second, where the person notified of the violation is no longer linked with the violator, notification will allow the person to immediately notify the regulatory authority that a link no longer exists. This will help prevent any problems in the future for that person should the permittee fail to submit the update information required by Section 773.17(i) indicating that the link no longer exists or if it submits erroneous information. Third, where the violator is a corporation, the notification to the individual owners and controllers will also provide a basis for the assessment of an individual civil penalty under section 518(f) of the Act and 30 CFR Part 846 or the State program equivalent.

Since this section contains a procedural requirement relating to enforcement sanctions, pursuant to Section 840.13(c) each state regulatory authority must adopt the same or similar requirements.

III. DISCUSSION OF PUBLIC COMMENTS

One commenter objected to the rule on procedural grounds. The commenter said that the proposed rule was based on the April 16, 1986 (51 FR 12879) option for defining ownership and control, and not on the option published for comment on May 4, 1987 (52 FR 16275). The commenter said that the data collection requirements varied dramatically between the two proposed definitions of ownership and control, and that it was not possible for the public to comment intelligently on the agency's approach to data collection. The commenter said that this failure violated the basic tenets of the Administrative Procedure Act (APA).

OSMRE disagrees. The APA requires that an agency publish "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). OSMRE complied with this requirement on May 28, 1987 (52 FR 20032) when it published proposed rule language which would conform the permit application requirement in Sections 778.13 and 778.14 with the April 16, 1986 option for the definition for "owned or controlled" and "owns or controls." The requirements adopted in this rule are substantially similar to those published on May 28, 1987. The requirements published on May 28, 1987 were based on the April 16, 1986 option because the definitions discussed in that option were more inclusive than the option published on April 5, 1985 (50 FR 13724).

In the May 28, 1987 notice, OSMRE also stated that if the May 4, 1987 option for the definition were selected rather than the April 16 option, the information reporting requirements might be changed, and indicated the nature of the change and specifically requested comments on alternative reporting requirements. Thus, this rule complies with the requirements of the APA.

One commenter objected to including in the rule any provision which would require an applicant to submit any information other than that specifically required by section 507(b) of the Act. The commenter argued that since the Congress articulated, with specificity, precise permit information requirements with respect to the applicant's corporate officers and owners, it was arbitrary and capricious for OSMRE to impose more expansive information reporting requirements. In support for this position, the commenter cited *In re: Permanent Surface Mining Regulation Litigation*, 14 E.R.C. 1083, 1097 (D.D.C. February 26, 1980).

OSMRE disagrees. The case cited by the commenter dealt with the narrow issue of whether the Secretary of the Interior could require the submission of hydrologic information for areas outside a permit area. In its decision the court concluded that the Congress articulated, with specificity, those instances in which hydrologic information outside the permit area was necessary, and consequently the Secretary's requirements which went beyond those instances specified by the Congress were arbitrary and capricious. *Id.*

"In the case of *In re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514 (D.C. Cir. 1981), cert. denied, 454 U.S. 822 (1981), the U.S. Court of Appeals for the District of Columbia Circuit decided the question of whether the Secretary had rulemaking authority to require a permit applicant to submit any items of information beyond those enumerated in the Act. The court held that the Act's explicit listings of permit information were not exhaustive and did not preclude the Secretary from requiring additional information needed to ensure compliance with the Act."

Id. at 527. The court held that both sections 201(c)(2) and 501(b) of the Act provide adequate authority for the Secretary to require the submission of additional information.

Section 201(c)(2) authorizes the Secretary to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Section 501(b) directs the Secretary to promulgate regulations "establishing procedures and requirements for preparation, submission and approval of State programs."

In addition to the two sections cited by the court, support for the rule may also be found in sections 201(c)(1), 507(b), 510(c) and 517(b)(1)(E) of the Act. The rule aids implementing the section 102(c)(1) requirement that permits be withheld for noncompliance with the Act. Section 507(b) requires the identification of owners and controllers, and also requests information on any suspension, revocation or bond forfeiture incurred by the applicant or any subsidiary, affiliate or person controlled by or under common control with the applicant in the five years preceding the date of the

application. Section 510(c) requires a listing of all notices of violation incurred by the applicant during the three year period preceding the date of the application. Section 517(b)(1)(E) authorizes the regulatory authority to require any permittee to provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems necessary for purposes of developing or assisting in the development, administration and enforcement of any approved State or Federal program, or of determining whether any person is in violation of any requirement of any such State or Federal program. It is evident, therefore, that the Secretary has ample authority to adopt the information reporting requirements contained in this rule.

One commenter said that the final Section 773.15(b)(1) compliance review required by Section 773.15(e) should be limited to any new information received in the information update required by Sections 778.13(i) and 778.14(d). Presumably the comment was made out of concern that the final compliance review could delay the issuance of the permit.

OSMRE believes that the final compliance review will not be a time-consuming process. When the updated information is submitted by the applicant pursuant to Sections 778.13(i) and 778.14(d) of this rule, OSMRE or the appropriate State regulatory authority will enter the information into the Applicant/Violator System. Both the initial and the second Section 773.15(b)(1) compliance review may be made using the Applicant/Violator System. Use of the computer-based system to make the review will take very little time and should not result in a delay in the issuance of the permit if the updated information does not result in a match between the applicant and a violator.

One commenter stated that a permit should be rescinded if the permittee failed to comply with the requirement of Section 773.17(i) to update certain information on its owners and controllers on an annual basis. In the proposed rule OSMRE stated that failure to submit the information could result in rescission of the permit.

As previously discussed, the updating requirement in Section 773.17(i) has been changed in the final rule to make it contingent upon the issuance of a cessation order. Once such a provision is incorporated into a regulatory program, if the permittee fails to furnish the required information, the permittee will have violated a permit condition and be subject to appropriate enforcement measures under the applicable regulatory program.

One commenter requested clarification concerning the requirement in Section 778.13(b) to furnish the name, address and telephone number of the person who will pay the abandoned mine land reclamation fee. The commenter wanted to know if the regulation required the submission of an organization such as a bank, or the name of a particular person at the bank who would make the payments on behalf of the operator.

The term person is defined in section 701(19) of the Act to mean an individual, partnership, association, society or joint stock company, firm company, corporation or other business organization. Consequently, if a financial institution makes the required payment for the operator the name of the institution would suffice. The name of the person actually paying the abandoned mine land reclamation fee on behalf of the operator is being requested in order to facilitate requests for audits and financial information.

Several commenters objected to the requirement in Section 778.13(i) and 778.14(d) of the rule for an applicant to submit updated information at the time a permit is approved but before it is issued. One commenter objected on the grounds that the Act requires that the information be submitted only once, and that the requirement to update the permit application information immediately prior to the issuance of the permit would be burdensome.

OSMRE disagrees. The commenter submitted no evidence to support the assertion that the requirement would be burdensome. The requirement could be burdensome only if numerous changes had occurred since the permit application was submitted. Where such changes have occurred in the ownership or control of the proposed mining operation or in the type and number of outstanding violations, it is only appropriate that the compliance history of the permit applicant and its owners and controllers be reviewed to insure that the permit is not issued in violation of section 510(c) of the Act.

Another commenter said that the proposed requirement to update the information in the permit application at the time of the submission of the bond would destroy the two-step process envisioned by the Act for permit issuance. The commenter stated that the decision to issue the permit should be based on the material submitted with the permit application, and the decision to accept the bond should be based on satisfaction of the bonding requirements in section 509 of the Act.

OSMRE disagrees. There is nothing in the Act to prevent the Secretary from requiring that the permit application be complete and accurate at the time of permit issuance. Clearly, it is the intent of the Congress that the permit be issued based on accurate information contained in the permit application.

Another commenter said that any delays between the submission of the permit application and the issuance of the permit were caused by the regulatory authority. Therefore, the commenter concluded, the applicant should not be required to update the information in the application.

OSMRE disagrees. Very often the delay between the time when a permit application is submitted and when the permit is issued is the result of factors such as the large size of the planned mining operation, the extent of the mining plan, requests for clarification concerning information in the permit application, or the need to prepare environmental documents. The lapse of time caused by such factors can be minimized but not entirely avoided. The only way of insuring that the permit is approved based on current information is to require that the information be updated. It is to the advantage of the permit applicant to update the information in the application in order to insure that the permit is issued based on accurate information.

One commenter suggested that the entire package of compliance information should be required only once at the time of bond submittal.

The suggestion to have the compliance information submitted only at the time the bond is submitted could delay the issuance of a permit. If the compliance information is submitted only at the time the bond is submitted, OSMRE or a State regulatory authority would not be able to conduct a compliance review until the very end of the permit application review process. By requiring the information to be submitted in the beginning, the regulatory authority is able to make an initial compliance review of the application and alert the applicant to any potential problem early enough to give the applicant sufficient time to correct it or to submit information indicating that the results of the initial compliance review were erroneous. This process should reduce or eliminate delays in the issuance of a permit. In addition, the regulatory authority's communication with the applicant at the outset concerning any problem that could preclude permit issuance will allow the regulatory authority to avoid expending resources on technical review of a permit application until a substantial likelihood exists that withholding of the permit will not be required.

One commenter suggested that OSMRE should have the responsibility to update that information at the time of permit issuance, based upon the information contained in the original application and OSMRE records.

OSMRE disagrees. The regulatory authority cannot totally update information without assistance from the applicant because it would have no way of knowing who any new owners or controllers of the applicant may be or what new violations may exist, but have not yet been entered into the Applicant/Violator System.

One commenter objected to the rule on the grounds that it did not require sufficient information concerning the rebuttable presumptions contained in the definition of "owned or controlled" and "owns or controls". The commenter argued that the rule should require the submission of information describing the role of each officer in a company, and the legal authority and duties of each director. In effect, the commenter wanted a permit applicant to submit sufficient information to either rebut or confirm the presumptions contained in the definition of ownership and control. The commenter was concerned that if the information were submitted at the time of a permit block, the individuals linked to a violator would "come forth on a piece-meal basis with self-selected information" to rebut the presumption.

OSMRE did not adopt the commenter's suggestion. Under the definition at 30 CFR 773.5 certain relations create a presumption of ownership or control. For example, owning at least ten percent of the applicant, or being an officer, director, general partner, or operator of the applicant results in a presumption of control. However, for the purpose of processing permit applications a presumption of control is important only if there is an outstanding violation to which a shareholder, officer, director, general partner, operator or other person covered by the definition is linked. If there is a violation, then it becomes important to determine if the control presumed by the rule does not in fact exist. OSMRE believes that it would result in an unreasonable expenditure of time, effort and resources by both the regulatory authority and the permit applicant if the regulations were to require all permit applicants to submit the information needed to rebut a presumption of control if no link to a violation existed and therefore there was no reason to rebut the presumption. An applicant can always submit the information if the compliance review indicates a link between an applicant and a violator.

Once the link is discovered, both the applicant and the regulatory authority can focus their attention on the specific relationship in question and will know what information is actually needed to rebut the presumption.

One commenter objected to the exception in Section 778.14(c) of the rule, which does not require the permit applicant to report all notices of violation (NOV's). Section 778.14(c) requires that only NOV's incurred directly by the applicant be reported. NOV's incurred to surface coal mining and reclamation operations owned or controlled by the applicant or by anyone who owns or controls the applicant need not be reported. The commenter argued that all NOV's should be listed and that they should be taken into consideration during the compliance review because the absence of a cessation order does not indicate the absence of a violation. The commenter further argued that the receipt of an NOV serves as an important indicator of an applicant's willingness and ability to comply with necessary legal restrictions and permit requirements.

OSMRE did not adopt the commenter's suggestion that NOV's incurred by operations owned or controlled by the applicant or by anyone who owns or controls the applicant be reported. Section 778.14(c) as adopted complies with the requirements of section 510(c) of the Act. That section requires that notices of violations incurred "by the applicant" be listed. The Act does not require that notices of violations incurred at surface coal mining operations owned or controlled by the applicant or by any person who owns or controls the applicant be reported. OSMRE believes that the exception to reporting NOV's incurred by operations owned or controlled by the applicant or by any person who owns or controls the applicant is reasonable in view of the Secretary's revision of the scope of the compliance review in Section 773.15(b)(1) and the presumption contained in that section that "in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application."

In addition to the above, the Secretary is adding to the regulations in Section 778.14(d) a new requirement. That section requires that after the approval of the permit, but before its issuance, the permit applicant must bring up to date, correct, or indicate no change has occurred in the violation information previously submitted pursuant to Section 778.14(c). Consequently, any unreported NOV's which were outstanding at the time the permit application was filed, and for which a cessation order was subsequently issued prior to the issuance of the permit, would have to be reported in the information update required immediately prior to the issuance of the permit, and would result in the permit being blocked unless the violation was in the process of being abated or else was the subject of a good faith appeal, in which case the permit would be conditionally issued.

Several commenters said that the information reporting requirements of the rule would be very burdensome. As an example, one commenter said that an existing company might be required to list on a permit application the names and addresses of one direct parent company, five second generation parent corporations (none of whom were primarily engaged in coal production), and an unknown number of third generation owners holding ten percent or more of the stock of the five second generation owners; three affiliates which are coal producing companies and ten affiliates which are not; in addition to officers, directors and violations of all of the above. By the commenter's calculations, the permit applicant would be required to list information for forty-three surface coal mining operations in ten States.

OSMRE is aware that for some large corporations the reporting requirements of this rule could be extensive. After the initial compilation of such material, however the incremental amount of effort to maintain and update the data for future applications would be less than the initial effort. These requirements are well within the discretion granted to the Secretary by the Act and are necessitated by the complex business structures created by companies mining coal.

One commenter disagreed with OSMRE's determination that the time and effort required to fulfill the data collection requirements of this rule would be minimal. The commenter said that the operating costs, time and effort involved in complying with the rule would have a substantial impact on all companies regardless of size. The commenter said that the annual updating of permit information could easily require an additional man-year or more to track all corporate personnel changes and violations and their ultimate resolution.

OSMRE's determination of the impact of the rule was based on calculations contained in its Determination of Effects, which indicates that in 1985, 73.4% of all operations could be classified as small operations. The result would be that most operations would not need much time to gather, organize and mail information required under the rule. The commenter did not submit any evidence to support the assertion that one man-year or more would be required. Moreover, the commenter said that many companies have already developed their own computerized data processing

systems to track some of the required information. This should minimize any increase in burden that might result. Also, in order to address concerns about the information reporting requirements, OSMRE did not adopt an annual update. Instead, updated information is required only after a cessation order is issued. Thus companies acting in compliance with their permits, or who abate violations within the time specified in a notice of violation can avoid having to submit updates of ownership and control information.

One commenter said that the regulatory authority should collect ownership information up and down the corporate chain. The commenter stated that requiring such information will not place a burden on coal companies because this data should be readily available in coal company records.

OSMRE agrees that such information must be submitted in a permit application. The rule requires the submission of information on owners and controllers of the permit applicant as well as mining operations owned or controlled by the applicant. See Section 778.13 (c) and (d) of the rule and the preamble discussion of those two sections.

One commenter asked for clarification of how OSMRE would determine control based on indirect ownership. For an example and discussion of indirect ownership, see the OSMRE final rule defining "owned or controlled" and "owns or controls," published on October 3, 1988 (*53 FR 38868*) at page 38874.

One commenter objected to the requirement in Section 778.13(j) for the use of a standard form to report the information required by this rule because it could cause additional burdens for the many companies that have already developed their own data processing systems to track some of the required information.

OSMRE believes that use of a standard form to report the information required by this rule can assist those applying for a permit application by indicating on the face of the form what information they must submit with regard to the identification of interests and violation history. Also, the use of a standard form can assist OSMRE and the State regulatory authorities in entering the information from the permit application into the Applicant/Violator System and minimize the amount of data entry error that might result. Any additional burden the use of a standard form might impose would be offset by these important advantages.

One commenter said that a permit applicant should be required to list all violations for which a permit block can be imposed.

OSMRE disagrees. While it is true a permit block can be imposed for violations an applicant is not required to list, OSMRE does not believe that it is necessary for the permit applicant to submit all of the information for which a permit block may be imposed because much of the information already is available to OSMRE and the State regulatory authorities. Final Section 778.14(c) and the existing regulations in Section 778.13 (a) and (b) together require the submission of most of the information suggested by the commenter, with the exception of outstanding Federal and State civil penalties and delinquent AML fees.

With regard to outstanding Federal civil penalties and delinquent AML fees, OSMRE has two computer-based systems which supply Federal violation data to the Applicant/Violator System. One is the Collection Management Information System (CMIS), and the other is the Abandoned Mine Land Fee Collection System (AML System). CMIS contains information on all delinquent Federal civil penalties while the AML System contains information on delinquent AML fees. With regard to delinquent State civil penalties, OSMRE intends to collect the relevant data and add it to the Applicant/Violator System at a later date after the quality of the data has been checked.

One commenter suggested that the rule should include a general provision which requires ownership and control information for anyone in an ownership or control relationship with the applicant or operator. For example, the commenter said, family members are frequently used as shams or fronts by irresponsible coal operators, and it would be a minimal burden to the applicant and the operator to list immediate family members who have mined in the past five years. The commenter also suggested that information be requested on mine managers, subcontractors and mine foremen.

OSMRE did not adopt the commenter's suggestion. The final rule at Section 778.13(c) requests information for any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5. Under Section 778.13(c) the permit applicant is required to list the operator and those who own or control the operator.

If a family member, mine manager or subcontractor controls the applicant, there is an obligation under Sections 778.13(c) and 773.5(a)(3) to list that person in the permit application. However, the rule does not specifically require information when control does not exist. First, the Act does not require OSMRE to collect such information, and second, the Congress has imposed limitations on information collection. OSMRE, like all other Federal agencies, is required by the Congress to reduce where possible the information collection burden it imposes on the public. In order to do this OSMRE has limited the information reporting requirements of this rule to those specifically required by the Act or clearly necessary for the compliance review required by 30 CFR 773.15(b). There has to be some reasonable limit on the information collected for the compliance review. If OSMRE were to request all data which may be useful but not essential for performing the compliance review, the data when added to that already required by other sections of the Act and regulations would be difficult and expensive to process for both the permit applicant and the regulatory authority.

The regulations at 30 CFR 773.13(b) allow for public participation in the permitting process. Through that process, the regulatory authority can receive, and often does receive, pertinent information about the permit applicant and its owners and controllers, which may affect the permitting decision.

One commenter said that there should be a specific requirement for the applicant to state whether the proposed operation is a contract mine, and if so, the applicant should be required to list the entity or entities involved in that relationship. The commenter stated that ownership and control information should be required for both parties to the contract, and a copy of the contract should be required as part of the permit application. If the contract is oral, its basic provisions should be described in the application.

OSMRE agrees in part. The rule in Section 778.13(c) requires that the permit application contain the name of any person owning or controlling coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive such coal after mining or having authority to determine the manner in which the proposed surface coal mining operation is to be conducted. Section 778.13(e) requires that the permit application contain the name and address of each legal or equitable owner of record of the mineral property to be mined and each leaseholder of record of any leasehold interest in the property to be mined. Consequently, with the exception of the terms of the contract, information concerning the parties to a contract mining operation, where control is presumed, is required by the rule. Information on the contracts of other mines is not needed unless the contracts result in control over the mines. Although the submittal of every contract would reduce the likelihood of the regulatory authority not discovering control relationships, a requirement for applicants to submit and regulatory authorities to review such information appears overly burdensome.

Under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5, there is a presumption of control for any person who owns or controls coal to be mined by another person under a lease, sublease or other contract and has the right to receive this coal after mining or has authority to determine the manner in which the other person mines the coal. If a presumption of control exists in a particular permitting situation, the permit applicant may rebut the presumption if the compliance review indicates a link between the applicant and the violator. In order to rebut the presumption in a contract mining situation, the applicant would be required, at a minimum, to submit the terms of the contract for examination. OSMRE does not believe that it should require the submission of the contract until such time as there is a need to rebut the presumption of control because of a potential permit block.

The same commenter also wanted the permit application to contain information on past contract mining operations of the applicant and operator along with the permit number, Mine Safety Health Administration (MSHA) number, and any outstanding violations.

OSMRE agrees in part with the commenter. This information with regard to past contract mining operations owned or controlled by the applicant is required by the rules in Sections 778.13(c)(4) and 778.14(c)(1).

One commenter suggested that previous Section 778.14(c) should be retained without change. Prior to revision, Section 778.14(c) required information on violation notices received by the applicant or any subsidiary, affiliate or persons controlled by or under common control with the applicant. As revised, Section 778.14(c) requires information on violation notices received by the applicant or any surface coal mining operation owned or controlled by the applicant or by anyone who owns or controls the applicant.

OSMRE declined to adopt the commenter's suggestion. The language adopted in Section 778.14(c) mirrors the language in 30 CFR 773.15(b)(1) governing compliance review. The language is no less inclusive than the compliance review required by section 773.15(b)(1), and in fact results in a review of companies under common control with the applicant. Use of this same terminology in both Sections 778.14(c) and 773.15(b)(1) will eliminate confusion.

One commenter stated that Section 778.14(c) of the rule should require the applicant to include the status of any violation. This information is already required by Section 778.14(c)(4) of the existing regulations.

One commenter also suggested that the permittee be required to submit updated information on an annual basis concerning all outstanding violations previously reported pursuant to Section 778.14(c).

OSMRE disagrees. The violation information submitted with the permit application is needed for the compliance review required by Section 773.15(b)(1). Once that review has been completed and the permit issued an update is not needed because any violation which occurs after the issuance of a permit will not affect the validity of the permit, and any violation which has already been reported pursuant to Section 778.14(c) will remain in the records of the regulatory authority until the violation is abated.

One commenter requested clarification of the responsibility of the regulatory authority with regard to verifying the information supplied by the permit applicant or challenging any information the regulatory authority has reason to believe may be incorrect.

The regulatory authority may independently verify the information contained in a permit application if it has reason to believe that the information is either inaccurate or incomplete. If the regulatory authority determines that the permit application is inaccurate or incomplete it may refuse to process the application until the missing information is submitted, or it may block the permit because of a violation or an ownership or control relationship discovered as a result of its own investigation. In either event, the regulatory authority should notify the permit applicant to submit additional information, which may indicate that the application is in fact accurate and complete or that a permit should be issued because there is no ownership or control link between the applicant and the violator. After such notice, the burden to respond is on the applicant.

One commenter suggested that the permittee be required to update the information at midterm review rather than on an annual basis, and to make any other updates only if changes occur. Another commenter suggested that updates be made only at the time of permit revision.

OSMRE did not adopt these suggestions. As previously discussed, the final rule requires a permittee to update the information contained in the permit application within thirty days of the issuance of a cessation order for the permitted site. OSMRE believes that it will be more advantageous to request the information at the time of a violation rather than on an annual basis. If no violation has occurred at midterm, there is no need for an information update. If a violation has occurred prior to an application for a permit revision, then the updated information is needed so that appropriate alternative enforcement action may be taken if necessary.

IV. PROCEDURAL MATTERS

Effect in Federal Program States and on Indian Lands

The rule will apply through cross-referencing to the following Federal program States: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. Comments were specifically solicited in the proposed rule as to whether unique conditions existed in any of these States relating to the proposal which should be reflected in the final rule either as changes to the national rules or as State-specific amendments to any or all of the Federal programs. No comments were received. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of the Act to determine any changes in these programs that will be necessary. When the director determines

that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provision of 30 CFR 732.17.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by *44 U.S.C. 3501* et seq., and assigned clearance numbers 1029-0034 and 1029-0041.

The public reporting burden for this information is estimated to average one hour per response for Section 773.17(i), and 13.5 hours per response for the sections located in Part 778 amended by this rule. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029-0034), Washington, DC 20503.

The information is needed to meet the requirements of sections 201, 507 and 510 of Pub. L. 95-87. The information will be used by OSMRE in reviewing and approving permit applications. Except for the disclosure of a social security number, the obligation to respond is mandatory in accordance with sections 201(c)(1), 201(c)(2), 501(b), 507(b), 510(c) and 517(b)(1)(E).

Executive Order 12291

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. This determination is based on the findings that the regulatory revisions and additions of this rule will cause very little increase in the costs of operating a mine in a manner that meets the requirements of the Act. Further, there will be no significant impacts on competition, employment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that the proposed rule will not have a significant economic impact on a substantial number of small entities because although the rule will impose new regulatory burdens on small entities, the time and effort required for a small entity to fulfill the additional data collection requirements will be minimal.

National Environmental Policy Act

The rule has been reviewed by OSMRE and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Department of the Interior Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5241 (Commercial or FTS).

LIST OF SUBJECTS

30 CFR Part 773

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

30 CFR Part 778

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 843

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

Accordingly, 30 CFR Parts 773, 778 and 843 are amended as set forth below.

Date: December 8, 1988.

James E. Cason, Deputy Assistant Secretary -- Land and Minerals Management.

PART 773 -- REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 continues to read as follows:

Authority: *30 U.S.C. 1201 et seq., 16 U.S.C. 470 et seq., 16 U.S.C. 1531 et seq., 16 U.S.C. 661 et seq., 16 U.S.C. 703 et seq., 16 U.S.C. 668a et seq., 16 U.S.C. 469 et seq., 16 U.S.C. 470aa et seq., and Pub. L. 100-34.*

2. Section 773.15 is amended by adding paragraph (e) to read as follows:

SECTION 773.15 - REVIEW OF PERMIT APPLICATIONS.

* * * * *

(e) Final compliance review. After an application is approved, but before the permit is issued, the regulatory authority shall reconsider its decision to approve the application, based on the compliance review required by paragraph (b)(1) of this section in light of any new information submitted under Sections 778.13(i) and 778.14(d) of this chapter.

3. Section 773.17 is amended by adding paragraph (i) to read as follows:

SECTION 773.17 - PERMIT CONDITIONS.

* * * * *

(i) Within thirty days after a cessation order is issued under Section 843.11 of this chapter, or the State program equivalent, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the regulatory authority the following information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the immediately preceding submittal of such information:

(1) Any new information needed to correct or update the information previously submitted to the regulatory authority by the permittee under Section 778.13(c) of this chapter; or

(2) If not previously submitted, the information required from a permit applicant by Section 778.13(c) of this chapter.

PART 778 -- PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

4. The authority citation for Part 778 is revised to read as follows:

Authority: Pub. L. 95-87, *30 U.S.C. 1201 et seq., and Pub. L. 100-34.*

5. Section 778.10 is revised to read as follows:

SECTION 778.10 - INFORMATION COLLECTION.

The information collection requirements contained in Part 778 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0034. The information is being used to meet the requirements of sections 201, 507(b), 508(a), and 510(c) of the Act, which require that persons conducting surface coal mining operations submit to the regulatory authority relevant information regarding ownership and control of the property to be affected by such operations, compliance status and history. This information will be used by the regulatory authority to insure that all legal, financial and compliance requirements are satisfied prior to making a decision to issue or deny a permit under the permanent regulatory program. Except where specifically noted, the obligation to respond is mandatory in accordance with sections 201(c)(1), 201(c)(2), 501(b), 507(b), 510(c), and 571(b)(1)(E).

6. Section 778.13 is amended by revising the introductory text and paragraphs (b), (c) and (d), and by adding paragraphs (i) and (j) to read as follows:

SECTION 778.13 - IDENTIFICATION OF INTERESTS.

An application shall contain the following information, except that the submission of a social security number is voluntary:

* * * * *

(b) The name, address, telephone number and, as applicable, social security number and employer identification number of the:

- (1) Applicant;
- (2) Applicant's resident agent; and
- (3) Person who will pay the abandoned mine land reclamation fee.

(c) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Section 773.5 of this chapter, as applicable:

- (1) The person's name, address, social security number and employer identification number;
- (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
- (3) The title of the person's position, date position was assumed, and when submitted under Section 773.17(i) of this chapter, date of departure from the position;
- (4) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and
- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Section 773.5 of this chapter, the operation's:

- (1) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and
- (2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

* * * * *

(i) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under

paragraphs (a) through (d) of this section.

(j) The applicant shall submit the information required by this section and by Section 778.14 of this part in any prescribed OSMRE format that is issued.

7. Section 778.14 is amended by revising the introductory text, the introductory text to paragraph (c), and paragraph (c)(1) and by adding paragraph (d) to read as follows:

SECTION 778.14 - VIOLATION INFORMATION.

Each application shall contain the following information:

* * * * *

(c) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

* * * * *

(d) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

PART 843 -- FEDERAL ENFORCEMENT

7. The authority citation for Part 843 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., and Pub. L. 100-34.

8. Section 843.11 is amended by adding paragraph (g) to read as follows:

SECTION 843.11 - CESSATION ORDERS.

* * * * *

(g) Where OSMRE is the regulatory authority, within sixty days after issuing a cessation order, OSMRE shall notify in writing any person who has been identified under Sections 773.17(i) and 778.13 (c) and (d) of this chapter as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.