FEDERAL REGISTER: 48 FR 44344 (September 28, 1983)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 701, 770, 771, 773, 774, 775, 777, 778, 782, 786, 787, and 788
Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program;
Permitting -- Processing, General Content,
and Legal, Financial, Compliance, and Related Information Requirements of Applications

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising its permanent program rules pertaining to: (1) The processing of permits for surface coal mining operations, (2) the general contents of permit applications, and (3) the legal, financial, compliance, and related information requirements of these applications, this rulemaking involves the addition of four new parts to Subchapter G of 30 CFR Chapter VII, the revision of one part, and the removal of six parts. The purpose of these changes is to bring together and reorganize previous Parts 770, 771, 778, 782, 786, 787, and 788. Such changes are needed to clarify permit requirements and procedures for applicants and the public.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Josie Smith, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202-343-5955.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (the Act), provides various requirements for permits, including application and processing requirements. These include Section 506, which contains the general requirements for permits and renewals; Section 507, which contains permit application requirements, specifies the requirements for confidential information, and provides for public inspection of applications; and Section 508, which describes the information to be included in the reclamation plan and specifies which information is to be kept confidential. In addition, Section 510 provides standards for permit approval or denial; Section 511 sets standards for revisions of permits and transfer, assignment, or sale of permit rights; Section 512 sets standards for coal exploration including conditions when written approval of the regulatory authority is required prior to exploration. Section 513 provides for public notice and public hearings including comments on permit applications and informal conferences; and Section 514 sets out procedures for decisions by the regulatory authority and appeals from such decisions. Other sections of the act relating to requirements for permits under the permanent regulatory program include Sections 101, 102, 201(c), 503, 504, 509, 515, 516, 519, 527, 528, and 529 of the Act.

The permanent regulatory program permitting requirements of the Act were originally implemented through the adoption of Subchapter G (Parts 770-788) of Title 30, Chapter VII of the Code of Federal Regulations *(44 FR 14902* et seq., March 13, 1979). These prior rules dealt with the process of obtaining a permit, the contents of permit applications, and the administrative and judicial review of decisions on permit. Previous Part 770 contained general requirements and

definitions for permit issuance under the permanent regulatory program. Previous Part 771 contained general provisions concerning the initiation of a permitting system and the filing of permit applications. Previous Part 778 set forth the minimum legal, financial, compliance, and related information requirements for permit applications for surface mines; previous Part 782 set forth similar requirements for underground mines. Previous Part 786 covered public participation and review and approval of permit applications. Previous Part 787 governed administrative and judicial review of permit decisions. Previous Part 788 regulated permit revisions and renewals; transfer, assignment, or sale of permit rights; and periodic review of existing permits.

Through this rulemaking, OSM is reorganizing and simplifying a portion of Subchapter G to provide a more logical sequence to permit processing and content requirements; to recognize the role of the States as primarily responsible for developing, approving or disapproving and enforcing permitting requirements for surface coal mining operations; and to eliminate overly burdensome, counterproductive and duplicative rules. In addition to revising Subchapter G, this final rule also includes revisions to certain applicability provisions and definitions, which relate to permitting and which are located in Part 701 of Subchapter A, General.

Rules which deal with the process of obtaining a permit are consolidated in final Part 773. Part 773 also incorporates most of the requirements of previous Parts 770, 771, and 786. Part 774 deals with the regulatory authority review and modification of permits and incorporates the requirements of previous Part 788. Part 775 covers the administrative and judicial review of decisions and incorporates the requirements of previous Part 787.

All rules dealing with the general content requirements for permit applications, including portions of previous Part 771, are in Part 777. All rules dealing with the legal, financial, compliance, and related information required in permit applications, including previous Part 782 dealing with underground mines, are contained in final Part 778.

To assist the reader in understanding all the changes in the final rules, the following derivation table shows the relationship of the final permitting rules to the previous rules and the proposed rules of June 25, 1982 *(47 FR 27688)*.

DERIVATION TABLE – PERMITTING – PART 701

Final definitions	Previous rule	Proposed rule
Section 701.5:		
Administratively complete application	Section 770.5	Section 701.5
Applicant	Section 770.5	Section 701.5
Application	Sections 770.5 & 701.5	Section 701.5
Complete and accurate application	Section 770.5	Section 701.5
Irreparable damage to the environment	Section 786.5	Section 701.5
Principal shareholder	Section 770.5	Section 701.5
Property to be mined	Section 770.5	Section 701.5
Successor in interest	Section 788.5	Section 701.5
Transfer, assignment or sale of permit rights	Section 788.5	Section 701.5
Violation notice	Section 770.5	Section 701.5
Willful violation	Section 786.5	Section 701.5
Section 701.11:		
Section 701.11(d) is revised to be consistent with changes made in these final permitting rules.		

FINAL PART 773

Final rule	Previous rule	Proposed rule
Section 773.1	Sections 770.1, 771.1, 786.1 & 788.1	Section 773.1
Section 773.10		Section 773.10
Section 773.11:		Section 773.11:
(a)	Section 771.11	(a)
(b)(1)	Section 771.13(a)	(b)(1)
(b)(2)	Section 771.13(b)	(b)(2)
(b)(2)(i)	Section 771.21(a)(1)	(b)(2)(i)
(b)(2)(ii)	Section 771.13(b)(2)	(b)(2)(iii)
(b)(2)(iii)	Section 771.13(b)(3)	(b)(2)(iv)
(b)(3)		(b)(3)
(c)(1)	Section 771.15 Intro	(c)(1)
(c)(2)	Section 771.15(a)	(c)(2)
(c)(3)	Section 771.15 (b) & (c)	(c)(3)
(c)(3)(i)	Section 771.15(c)(2)	(c)(3)(i)
(c)(3)(ii)	Section 771.15(c)(2)	(c)(3)(ii)
(c)(3)(iii)		(c)(3)(iii)
(c)(3)(iv)		(c)(3)(iv)
(d)(1)	Section 771.17 intro	(d)(1)
(d)(2)	Section 771.17 intro	(d)(2)
(d)(2)(i)	Section 771.17(a)	(d)(2)(i)
(d)(2)(ii)	Section 771.17(b)	(d)(2)(ii)
(d)(2)(iii)	Section 771.17(c)	(d)(2)(iii)
(d)(2)(iv)	Section 771.17(d)	(d)(2)(iv)
Section 773.12	Section 770.12 intro & (c)	
Section 773.13:		Section 773.13:
(a)(1)	Section 786.11(a)	(a)(1)
(a)(1)(i)	Section 786.11(a)(1)	(a)(1)(i)
(a)(1)(ii)	Section 786.11(a)(2)(i, ii & iv)	(a)(1)(ii)
(a)(1)(iii)	Section 786.11(a)(3)	(a)(1)(iii)
(a)(1)(iv)	Section 786.11(a)(4)	(a)(1)(iv)
(a)(1)(v)	Section 786.11(a)(5)	(a)(1)(v)
(a)(1)(vi)	Section 786.13(g)	(a)(1)(iv)
(a)(2)	Section 786.11(d)(1-2)	(a)(2)
(a)(3)	Section 786.11(b)(1-4)	(a)(3)
(a)(3)(i)	Section 786.11(c)(1-3)	(a)(3)(i)
(a)(3)(ii)	Section 786.11(c)(4)	(a)(3)(ii)
(b)(1)	Section 786.12(a) & (b)	(b)(1)
(b)(2)	Section 786.13(a)	(b)(2)
(b)(3)(i-ii)	Sections 786.12(c) & 786.13(b)(1-2)	(b)(3)(i-ii)
(c)(i)(i-iii)	Section 786.14(a)(1-3)	(c)(1)(i-iii)
(c)(2)(i-iv)	Section 786.14(b)(1-4)	(c)(2)(i-iv)
(c)(3)	Section 786.14(c)	(c)(3)
(c)(4)	Section 786.14(d)	(c)(4)
(d)(1)	Section 786.15(a)	(d)(1)
(d)(2)	Section 786.15(a)(1)	(d)(2)
(d)(3)(i-ii)	Section 786.15 (a)(2-3) & (b)	(d)(3)(i-iii)
(d)(3)(iii)		

Section 773.15:		Section 775.15:
(a)(1)	Sections 786.17(a)(1) & 786.23(b)(1)(ii)	(a)(1)
(a)(2)		(a)(2)
(b)(1)	Section 786.17(c)	(b)(1)
(b)(1)(i)	Section 786.17(c)(1)	(b)(1)(i)
(b)(1)(ii)	Section 786.17(c)(2)	(b)(1)(ii)
(b)(2)	Section 773.21(a)(1)(ii)	
(b)(3)	Section 786.17(d)	(b)(2)
(c)	Section 786.19 Intro	(c)
(c)(1)	Section 786.19(a)	(c)(1)
(c)(2)	Section 786.19(b)	(c)(2)
(c)(3)(i)	Section 786.19(d)(1-2)	(c)(3)(i)
(c)(3)(ii)	Section 786.19(d)(3)	(c)(3)(ii)
(c)(4)	Section 786.19(f)	(c)(4)
(c)(5)	Section 786.19(c)	(c)(5)
(c)(6)	Section 786.21 (a)(1) & (a)(1)(i)	
(c)(7)	Section 786.19(h)	(c)(7)
(c)(8)	Section 786.19(l)	(c) (6) & (8)
(c)(9)	Section 786.19(m)	(c)(9)
(c)(10)	Section 786.19(o)	
(c)(11)	Sections 786.19(d)(3) & 761.11(g)	
(d)	Section 786.17(b)	(d)

Section 773.17:		Section 773.17:
Intro		Intro
(a)	Section 786.27(c)	(a)
(b)	Sections 786.27(a) & 771.19	(b)
(c)	Section 771.19	(c)
(d)	Section 786.27(b)	(d)
(d)(1)	Section 786.27(b)(1)	(d)(i)
(d)(2)	Section 786.27(b)(2)	(d)(ii)
(e)(1-3)	Section 786.29(a)(1-3)	(e)(1-3)
(f)		
(g)	Section 786.21(a)(1-2)	

Section 773.19:		
(a)	Section 786.17(b)	Section 773.15(a)(3) & (d)
(b)(1)	Section 786.23.(c)	Section 773.15(a)(4)
(b)(2)	Section 786.23(f)	Section 773.15(a)(4)
(b)(3)	Section 786.23(e)(1)(ii)	Section 773.15(a)(5)
(c)	Section 786.25(a)(1-2)	Section 773.19(b)
(d)	Sections 788.13(a) & 786.19 Intro & (a)	Section 773.19(a)
(e)(1)	Section 786.25(b)(1)	Section 773.19(c)(1)
(e)(2)(i)	Section 786.25(b)(2)(i)	Section 773.19(c)(2)(i)
(e)(2)(ii)	Section 786.25(b)(2)(ii)	Section 773.19(c)(2)(ii)
(e)(3)	Section 786.25(b)(3)	Section 773.19(c)(3)
(e)(4)	Section 786.25(b)(4)	Section 773.19(c)(4)

FINAL PART 774

Final rule	Previous rule	Proposed rule
Section 774.1	Sections 788.1-788.3	Section 773.1
Section 774.10		Section 773.10
Section 774.11:		
(a)	Section 788.11(a)(1)	Section 773.23(a)
(a)(1)	Section 788.11(a)(2)	Section 773.23(a)(1)
(a)(2)	Section 788.11(a)(1)	Section 773.23(a)(2)
(a)(3)	Sections 788.11(a)(1) & 785.16(e)	Section 773.23(a)(3)
(b)	Section 788.11(b) & 788.12(a)(2)	Section 773.23(b)
(c)	Section 788.11 (c) & (d)	Section 773.23(c)
(d)	Section 786.25(c)	Section 773.23(d)
Section 774.13:		
(a)		Section 773.25(a)
(b)(1)	Sections 788.12 (c), (b)(1) & 771.21(b)(3)	Section 773.25(b)(i)
(b)(2)	Section 788.12(b)(2)	Section 773.25(b)(ii)
(c)	Section 788.12(c)	Section 773.25(c)
(d)	Section 788.12(d)	Section 773.25(d)
Section 774.15:		
(a)	Section 788.13 (a) & (b)	Section 773.27(a)
(b)(1)	Section 771.21(b)(2)	Section 773.27(b)(1)
(b)(2)	Section 788.14(a)	Section 773.27(b)(2)
(b)(2)(i)	Section 788.14(a)(1)	Section 773.27(b)(2)(i)
(b)(2)(ii)	Section 788.14(a)(3)	Section 773.27(b)(2)(ii)
(b)(2)(iii)	Sections 788.16(a)(4) & 788.14(b)(4)	Section 773.27(b)(2)(iii)
(b)(2)(iv)	Section 788.14(a)(2)	Section 773.27(b)(2)(iv)
(b)(2)(v)	Section 788.16(a)(5)	Section 773.27(b)(2)(v)
(b)(3)	Section 788.14(b)(1)	Section 773.27(b)(3)
(b)(4)	Section 788.14(a)(1) & (b)(2)	Section 773.27(b)(4)
(c)(1)	Section 788.16(a)	
(c)(1)(i)	Section 788.16(a)(1)	Section 773.27(c)(1)(i)
(c)(1)(ii)	Section 788.16(a)(2)	Section 773.27(c)(1)(ii)
(c)(1)(iii)	Section 788.16(a)(3)	Section 773.27(c)(1)(iii)
(c)(1)(iv)		Section 773.27(c)(1)(iv)
(c)(1)(v)	Section 788.16(a)(4)	Section 773.27(c)(1)(v)
(c)(1)(vi)	Section 788.16(a)(5)	Section 773.27(c)(1)(vi)
(c)(2)	Section 788.16(b)	Section 773.27(c)(2)
(c)(3)	Section 788.14(b)(3)	Section 773.27(c)(3)
(d)	Section 788.15	Section 773.27(d)
(e)	Section 788.16(c)	Section 773.27(e)
(f)	Section 788.16(d)	Section 773.27(f)

Section 774.17:		
(a)	Sections 788.17 Intro & 788.18(a)(3)	Section 773.29(a)
(b)	Section 788.18(a)	Section 773.29(b)
(b)(1)	Section 788.18(a)(2)	Section 773.29(b)(2)
(b)(1)(i)	Section 788.18(a)(2)(i)	Section 773.29(b)(2)(i)
(b)(1)(ii)		Section 773.29(b)(2)(ii)
(b)(1)(iii)	Section 788.18(a)(2) (iii) & (iv)	Section 773.29(b)(2)(iii)
(b)(2)	Section 788.18(b)(1)	Section 773.29(b)(3)
(b)(3)	Section 788.18 (a)(1) & (c)(2)	Section 773.29(b)(1)
(c)	Section 788.18(b)(2)	Section 773.29(c)
(d)	Section 788.18(c)	Section 773.29(d)
(d)(1)	Section 788.18(c)(1)	Section 773.29(d)(1)
(d)(2)	Section 788.18(c)(2)	Section 773.29(d)(2)
(d)(3)	Section 788.18(c)(1)	Section 773.29(d)(3)
(e)(1)	Section 788.11(c)	
(e)(2)		
(f)	Section 788.18(c)(3)	Section 773.29(e)

FINAL PART 775

Final rule	Previous rule	Proposed rule
Section 775.1	Section 787.1	Section 773.1
Section 775.11:		
(a)	Section 787.11(a)	Section 773.21(a)
(b)(1)	Section 787.11(b)(1)	Section 773.21(a)(1)(i)
(b)(2)	Section 787.11(b)(2)	Section 773.21(a)(1)(ii)
(b)(2)(i)	Section 787.11(b)(2)(i)	Section 773.21(a)(1)(ii)(A)
(b)(2)(ii)	Section 787.11(b)(2)(ii)	Section 773.21(a)(1)(ii)(B)
(b)(2)(iii)	Section 787.11(b)(2)(iii)	Section 773.21(a)(1)(ii)(C)
(b)(2)(iv)	Section 787.11(b)(2)(iv)	Section 773.21(a)(1)(ii)(D)
(b)(3)(i-iii)	Section 787.11(b)(3)(i-iii)	Section 773.21(a)(1)(iii)(A-C)
(b)(4)	Section 787.11(b)(4)	Section 773.21(a)(1)(iv)
(b)(5)	Section 787.11(b)(5)	Section 773.21(a)(1)(v)
(c)	Section 787.11(c)	Section 773.21(a)(2)
Section 775.13:		
(a)	Section 787.12(a)	Section 773.21(b)
(a)(1)	Section 787.12(a)(1)	Section 773.21(b)(1)(i)
(a)(2)	Section 787.12(a)(2)	Section 773.21(b)(1)(ii)
(b)	Section 787.12(b)(1)	Section 773.21(b)(2)
(c)	Section 787.12(b)(2)	Section 773.21(b)(3)

FINAL PART 777

Final rule	Previous rule	Proposed rule
Section 777.1	Sections 771.1 & 771.2	Section 775.1
Section 777.10		Section 775.10
Section 777.11:		
(a)(1)	Section 771.23(b)	Section 775.11(a)(1)
(a)(2)	Section 771.23(b)	Section 775.11(a)(2)
(a)(3)	Section 771.23(a)	Section 775.11(a)(3)

(b)	Section 771.23(b)	Section 775.11(b)
(c)	Section 771.27	Section 775.11(c)
Section 777.13:		
(a)	Section 771.23(c)(1-3)	Section 775.13(a)
(b)		Section 775.13(b)
Section 777.14:		
(a)	Section 771.23(e)(1)	
(b)	Section 771.23(e)(2)	
(b)(1)	Section 771.23(e)(2)(i)	
(b)(2)	Section 771.23(e)(2)(ii)	
(b)(3)	Section 771.23(e)(2)(iii)	
(b)(4)	Section 771.23(e)(2)(iv)	
Section 777.15:		
Intro	Section 771.23(a)	Section 775.15 intro
(a)	Section 771.23(a)	Section 775.15(a)
(b)	Section 771.23(a)	Section 775.15(b)
Section 777.17	Section 771.25	Section 775.17

FINAL PART 778

Final rule	Previous rule	Proposed rule
Section 778.1	Sections 778.1, 778.2, 778.4, 778.11& 782.1-782.11	Section 778.1
Section 778.10		Section 778.10
Section 778.13:		Section 778.13:
(a)	Sections 778.13(b) & 782.13(b)	(a)
(b)	Sections 778.13(a)(1, 5 & 6) & 782.13(a)(1, 5 & 6)	(b)
(c)(1)	Sections 778.13 (b)(1-2) & (c) & 782.13 (b)(1-2) & (c)	(c)(1-2)
(c)(2)	Sections 778.13 (b)(3) & 782.13(b)(3)	(c)(3)
(d)	Sections 778.13(d) & 782.13(d)	(d)
(e)	Sections 778.13(a)(2-4) & 782.13(a)(2-4)	(e)
(f)	Sections 778.13(e) & 782.13(e)	(f)
(g)	Sections 778.13(f) & 782.13(f)	(g)
(h)	Sections 778.13(g) & 782.13(g)	(h)

Section 778.14:		Section 778.14:
(a)	Sections 778.14(a) & 782.14(a)	(a)
(a)(1)	Sections 778.14(a)(1) & 782.14(a)(1)	(a)(1)
(a)(2)	Sections 778.14(a)(2) & 782.14(a)(2)	(a)(2)
(b)	Sections 778.14(b) & 782.14(b)	(b)
(b)(1)	Sections 778.14(b)(1) & 782.14(b)(1)	(b)(1)
(b)(2)	Sections 778.14(b)(2) & 782.14(b)(2)	(b)(2)
(b)(3)	Sections 778.14(b)(3) & 782.14(b)(3)	(b)(3)
(b)(4)	Sections 778.14(b)(4) & 782.14(b)(4)	(b)(4)
(b)(5)	Sections 778.14(b)(5) & 782.14(b)(5)	(b)(5)
(c)	Sections 778.14(c) & 782.14(c)	(c)
(c)(1)	Sections 778.14(c)(1) & 782.14(c)(1)	(c)(1)
(c)(2)	Sections 778.14(c)(2) & 782.14(c)(2)	(c)(2)
(c)(3)	Sections 778.14(c)(3) & 782.14(c)(3)	(c)(3)
(c)(4)	Sections 778.14(c)(4) & 782.14(c)(4)	(c)(4)
(c)(5)	Sections 778.14(c)(5) & 782.14(c)(5)	(c)(5)
Section 778.15:		Section 778.15:
(a)	Sections 778.15(a) & 782.15(a)	(a)
(b)(1)	Sections 778.15(b)(1) & 782.15(b)(1)	(b)(1)
(b)(2)	Sections 778.15(b)(2) & 782.15(b)(2)	(b)(2)
(b)(3)	Sections 778.15(b)(3) & 782.15(b)(3)	(b)(3)
(c)	Sections 778.15(c) & 782.15(c)	(c)
Section 778.16:		Section 778.16:
(a)	Sections 778.16(a) & 782.16(a)	(a)
(b)	Sections 778.16(b) & 782.16(b)	(b)
(c)	Sections 778.16(c) & 782.16(c)	(c)
Section 778.17:		Section 778.17:
(a)	Sections 778.17(a) & 782.17(a)	
(b)	Sections 778.17(b) & 782.17(b)	Intro
(b)(1)	Sections 786.25(a)(1)	(a)
(b)(2)	Sections 786.25(a)(2)	(b)
Section 778.18	Sections 778.18 & 782.18	Section 778.18
Section 778.21	Sections 778.21 & 782.21	Section 778.21
Section 778.22		Section 778.22

An additional table below shows the changes made to the previous permitting rules and to what sections some of their provisions have been moved.

PREVIOUS RULE AND CHANGES
PART 770
770.1 -- removed; part of Section 773.1.
770.2 -- removed.
770.4 -- removed.
770.5 -- removed; definitions in Section 701.5.
770.6 -- removed.
770.11 -- removed.
770.12 -- removed; intro and (c) in Section 773.12.

PART 771
771.1 -- removed; part of Sections 773.1 and 777.1.
771.2 -- removed; part of Section 777.1.
771.11 -- removed; provisions in Section 773.11(a).
771.13 -- removed; provisions in Section 773.11(b).
771.15 -- removed; provisions in Section 773.11(c).
771.17 -- removed; provisions in Section 773.11(d).
771.19 -- removed; provisions in Section 773.17(b) and (c).
771.21 -- removed; provisions in Sections 773.11(b)(2)(i), 774.13(b)(1) and 774.15(b)(1).
771.23 -- removed; provisions in Sections 777.11-777.15.
771.25 -- removed; provisions in Section 777.17.
771.27 -- removed; provisions in Section 777.11.

PART 776 -- revised in another rulemaking for coal exploration.

PART 778
778.1 -- revised.
778.2 -- removed; included in Section 778.1.
778.4 -- removed; included in Section 778.1.
778.11 -- removed; included in Section 778.1.
778.13 -- revised.
778.14 -- revised.
778.15 -- revised.
778.16 -- revised.
778.17 -- revised.
778.18 -- revised.
778.19 -- removed.
778.20 -- removed.
778.21 -- revised.

PART 779 -- revised by individual sections in other rulemaking.

PART 780 -- revised by individual sections in other rulemakings.

PART 782
782.1 -- removed; part of Section 778.1.
782.2 -- removed; part of Section 778.1.
782.4 -- removed; part of Section 778.1.
782.11 -- removed; part of Section 778.1.
782.13 -- removed; provisions in Section 778.13.
782.14 -- removed; provisions in Section 778.14.
782.15 -- removed; provisions in Section 778.15.
782.16 -- removed; provisions in Section 778.16.
782.17 -- removed; provisions in Section 778.17.
782.18 -- removed; provisions in Section 778.18.
782.19 -- removed.
782.20 -- removed.
782.21 -- removed; provisions in Section 778.21.

PART 783 -- revised by individual sections in other rulemakings.

PART 784 -- revised by individual sections in other rulemakings.

PART 785 -- revised by individual sections in other rulemakings.

PART 786
786.1 -- removed; part of Section 773.1.
786.2 -- removed;
786.4 -- removed;
786.5 -- removed; definitions in Section 701.5.
786.11 -- removed; provisions in Section 773.13.
786.12 -- removed; provisions in Section 773.13.
786.13 -- removed; provisions in Section 773.13.
786.14 -- removed; provisions in Section 773.13.
786.15 -- removed; provisions in Section 773.13.
786.17 -- removed; provisions in Sections 773.15 and 773.18.
786.19 -- removed; provisions in Sections 773.15 and 773.19.
786.21 -- removed; provisions in Sections 773.15 and 773.17.
786.23 -- removed; provisions in Section 773.19.
786.25 -- removed; provisions in Sections 773.19, 774.11(d) and 778.17.
786.27 -- removed; provisions in Section 773.17.
786.29 -- removed; provisions in Section 773.17.

PART 787
787.1 -- removed; part of Section 775.1.
787.2 -- removed.
787.11 -- removed; provisions in Section 775.11.
787.12 -- removed; provisions in Section 775.13.

PART 788
788.1 -- removed; part of Sections 774.1 and 773.1.
788.2 -- removed; part of Section 774.1.
788.3 -- removed; part of Section 774.1.
788.5 -- removed; definitions in Section 701.5.
788.11 -- removed; provisions in Sections 774.11 and 774.17.
788.12 -- removed; provisions in Sections 774.11 and 774.13.
788.13 -- removed; provisions in Sections 773.19 and 774.15.
788.14 -- removed; provisions in Section 774.15.
788.15 -- removed; provisions in Section 774.15.
788.16 -- removed; provisions in Section 774.15.
788.17 -- removed; provisions in Section 774.17.
788.18 -- removed; provisions in Section 774.17.
788.19 -- removed.

II. DISCUSSION OF RULES ADOPTED AND RESPONSES TO COMMENTS

A. PART 701 -- PERMANENT REGULATORY PROGRAM

SECTION 701.5 - DEFINITIONS.

GENERAL COMMENTS

Several proposed definitions, "applicant," "application," "complete and accurate application, " and "administratively complete application," included the term "coal exploration." Several commenters felt that for consistency with Section 512 of the Act and the preamble to proposed Part 772, coal exploration as used in these definitions should refer only to those exploration activities where more than 250 tons of coal are to be removed. Other commenters suggested that the terms "applicant" and "application" should limit the concept of coal exploration to that which substantially disturbs the land in accordance with Section 512(a) of the Act. Another commenter felt that the term "applicant" should not refer to coal exploration permits but to exploration approval since the legislative history indicates that the concept of an exploration permit was deleted from the Act and shows that exploration is to be performed subject to the rules of OSM.

OSM agrees that the definitions should limit the term coal exploration as it applies to the applicant and application. As the legislative history shows (see 121 Congressional Record 6219, March 12, 1975), an applicant is a person applying for a permit. Exploration permits are only required if the person intends to remove more than 250 tons of coal or the exploration will occur on lands designated as unsuitable for surface coal mining operations. This is explained in regard to final Section 772.12 of the revised coal exploration rules. OSM is therefore adding the phrase "where required" to the definitions of "applicant," "application," "administratively complete application," and "complete and accurate application" to clarify that an exploration permit is not needed in every instance.

OSM disagrees with the commenter who stated that an exploration permit cannot be required under the Act. OSM notes that Section 512 of the Act is entitled "Coal Exploration Permits," and Section 512(d) of the Act refers specifically to "an exploration permit."

The use of the phrase "coal exploration which substantially disturbs the land" is explained in the preamble to the coal exploration rule. Generally, a permit is not needed for exploration where less than 250 tons of coal will be removed. Instead, when removing less than 250 tons, a notice is required when the land may be substantially disturbed. Under the Federal regulations, this notice is not required to be part of an approval process. It is simply a notification to the regulatory authority describing the proposed exploration and associated reclamation. The basis for this notification and the determination of what activity constitutes substantial disturbance is made by the regulatory authority. For further discussion of these concepts see the final coal exploration rules (FR 40622, September 8, 1983).

ADMINISTRATIVELY COMPLETE APPLICATION AND COMPLETE AND ACCURATE APPLICATION

Two new definitions were proposed to replace the definition of "complete application," which was located in previous Section 770.5. These are "administratively complete application" and "complete and accurate application."

To be considered an "administratively complete application," an application must contain all the information necessary to begin the processing of the permit application by the regulatory authority and to initiate public review. Thus, a review to determine that the application is administratively complete will require, at a minimum, a survey of the application to determine whether there is sufficient data or material in response to each regulatory requirement to allow the administrative and public review process to proceed. This review will not be cursory, but will be a review to determine if additional material will be needed prior to public review and technical analysis by the regulatory authority. It is necessary that the public and technical reviewers have sufficient information in the application to be able to identify potential concerns associated with the mine. For example, a permit application would not be administratively complete if it simply stated that there would be no hydrologic impact. Rather, it must provide, as required by the Act and the regulations, the appropriate supporting hydrologic information.

This definition recognizes the inherent complexities involved in the permitting of a coal mine under the permanent regulatory program and allows some clarification or supplementation of material in the application prior to approval. In fact, such supplemental information is often necessary to ensure adequate consideration and disposition of public comments. Under previous Section 786.11(a), applicants were required to place newspaper advertisements upon the filing of complete permit applications. In practice, however, the previous rule was not strictly applied and the comment period was not started anew each time additional information was submitted to the regulatory authority following the filing of the application. The final definition of an "administratively complete application" recognizes these practical realities, while ensuring that each regulatory requirement is addressed in sufficient detail initially to provide for meaningful regulatory authority and public review of the application.

A "complete and accurate application" will contain all the information needed to issue a permit. Thus, a review to determine that the application is "complete and accurate" will require an examination and evaluation of all data and material in the application to determine whether all of the regulatory requirements are satisfied and all the program requirements are met as required by Section 510 of the Act. A "complete and accurate application" could include information resulting from an informal conference or hearing and other information determined as a result of the public participation process which will become part of the record concerning the permit application.

Most of the comments received on the proposed definitions of "administratively complete application" and "complete and accurate application" were favorable. Many commenters thought that the new definitions were a reasonable approach to application problems, that they are proper definitions, that they reduce unnecessary paperwork, and that they reduce applicant uncertainty and confusion associated with the permit application submission and approval process. Several commenters pointed out that these definitions recognize inherent complexities in permitting and the realities of permit application preparation and submittal. OSM agrees with these assessments of the effects of the rules adopted.

OSM also received some negative comments on these definitions. One commenter stated that the definition of an administratively complete application is not sufficient to satisfy Section 502(d) of the Act. The commenter said that an application must not merely address application requirements, but must satisfy those requirements. Page 91 of House Report 95-218 (95th Cong., 1st sess., 1977), was cited as indicating that Congress required an application to be complete and accurate. The commenter felt that the proposal would force the public to exercise their rights of review over a skeletal permit application that is less than complete, thereby "chilling" public involvement. The commenter also believed that the proposed definitions conflict with proposed Section 773.15.

OSM disagrees. First, Section 502(d) of the Act does not establish general requirements for permit processing. It establishes the special permitting procedures to be followed during the transition from the interim to the permanent regulatory program. Sections 507 and 508 of the Act, not Section 502(d) of the Act, set the requirements for what must be included in a permit application. Further, Section 502(d) of the Act refers to an "application," not a

"complete application." In reviewing the cited legislative history, there is also no mention of a "complete application." The page cited does refer to experience showing the need for a thorough and comprehensive data base, and the bill delineates the type of information required in permit applications in Sections 507 and 508 of the Act. However, Contrary to the commenter's assertion, none of the sections of the Act dealing with content or public participation requirements for permit applications specify that an application must satisfy every detail of the application requirements for final approval upon initial submission.

Section 513 of the Act requires initiation of public participation upon the submission of an application; there is no mention of a need to satisfy all the permit approval and issuance requirements before public participation begins.

Congress intended that public participation in the permit review process would ensure "that the decisions and actions of the regulatory authority are grounded upon complete and full information." (H. Rept. 95-218, 95th Congress, 1st Sess., 1977, p. 89.) Thus, it is expected and intended that review of the permit application will identify some items which must be supplemented or amended before the permit may be approved.

The commenter's interpretation favoring a permitting process that did not include such a provision or a practical equivalent would render the public participation and review process virtually meaningless and unnecessarily burdensome. It would require the process to start anew with the slightest revision based upon public or regulatory authority comments. Similarly, the applicant's participation in informal conferences would be detrimental to its interest in a speedy review, since any agreement to revise the permit based upon objections raised could require permit resubmission and a restart of the review process.

The concepts of a "complete" application and a "complete and accurate" application are contained in the Act in Section 510 (a) and (b)(1) and apply to the standards for permit approval by the regulatory authority after review. A "complete and accurate application" is thus a requisite for permit approval, not for the initiation of the review process. Under Section 513(a) of the Act, the public participation process begins with submission of an application. The final rule merely clarifies that this application must meet certain standards necessary for processing and public review. As stated in the preamble to the proposed rule *(47 FR 27696;* June 25, 1982), the permitting requirements must be "addressed in sufficient detail initially to provide for meaningful regulatory authority and public review of the application." Thus, it is not intended that an administratively complete application would be skeletal or "chill public involvement," but instead it will facilitate permit review as required under Section 773.15.

Another commenter said the proposed changes reduce the public's ability to understand and participate by beginning the comment period before an operator is required to file a permit application with all required plans, maps, narratives, and supporting data.

This comment is rejected as inaccurate. The commenter apparently misunderstood the requirement for an administratively complete application. The applicant is required to have the plans, maps, narratives, and supporting data required by Sections 507 and 508 of the Act in the administratively complete application, so that a meaningful review by the public and technical reviewers for the regulatory authority may begin.

One commenter said that OSM now proposes to allow a company to make changes after the official public comment period has begun, making public review difficult as the coal company could keep adding new material to its application. The commenters asserted that meaningful public review requires a complete application which specifically describes the proposed operation and provides for complete public access to the permitting process, with citizen right to comment and agency responsibility to consider and respond to comments in a meaningful way.

OSM believes a company should be able to provide supplementary information to its application if it will clarify its proposal to the regulatory authority and public. The determination that an application is administratively complete prior to initiation of public participation and technical review should ensure that public review is meaningful since all regulatory requirements will be covered in the application. The regulatory and technological complexities of surface coal mining necessitate allowing applicants some flexibility to supplement or amend the application in response to comments raised during the review process. This should not decrease the ability of the public to respond but enhance the quality of the final product -- a "complete and accurate application." Under this process public comments will

often have a greater impact than under the previous rules because a regulatory authority may seek supplemental information from the applicant or a modification of the proposed operation without necessarily requiring that the comment period start anew.

Following the commenter's suggestion would mean that an applicant could not revise his application based upon comments without significant risk of having to resubmit the application and restart the review process. Thus, the applicant could have the incentive to resist changes in the application and reclamation plan regardless of how beneficial the changes may be.

Another commenter said that OSM's statement in the preamble to the proposal that it is virtually impossible to submit an application not needing clarification or supplementary material is evidence of the absurdity of the total program.

Unfortunately, the preamble statement about the likely need for most applications to be supplemented has been misconstrued; OSM merely intended to indicate the public and regulatory authority review would often identify portions of the application which require clarification or additional explanation. Reviewers may also have valid suggestions on how the proposed operation may be improved. This is the purpose of public and regulatory authority review and has therefore been provided for in these new definitions. OSM disagrees, however, that the need to supplement a permit based on comments indicates the permit process is absurd.

One commenter suggested a concept of "technically complete" permit application. The commenter believed that for purposes of individual permit review, public notice begins upon filing of the application which must be technically complete under Section 507 of the Act. According to the commenter, the initial review for technical completeness should occur promptly followed by the "substantive analyzing for adequacy of the information" in light of regulatory requirements.

OSM intends that these definitions and permit processing rules will generally operate in the manner described by the commenter. OSM does not believe there is any significant substantive distinction between the commenter's suggestion and the rules adopted. OSM has adopted the definition of administratively complete application because it more correctly covers all application requirements and not just technical requirements and because it is consistent with the Act.

Another commenter suggested a second less extensive public comment period should be allowed after receipt of a complete and accurate application.

This comment is rejected. The Act does not provide for a second comment period after the application is determined to be complete and accurate. Rather, the Act establishes a comprehensive process consisting of public comment, informal conferences, and hearings prior to permit approval. A party objecting to a final decision by the regulatory authority to approve or deny a permit may request administrative and judicial review of that decision.

Another commenter suggested that the term "complete and accurate application" be amended to specify that it includes all information that is necessary "to make a decision on permit issuance."

This comment is accepted. The suggested change recognizes that, although a permit must be complete and accurate prior to approval, a complete and accurate application would not necessarily guarantee issuance of a permit if the regulatory authority makes findings which would be the basis for the denial of a permit. The final rule also clarifies that the regulatory authority is the entity to determine when an application is "administratively complete" and "complete and accurate."

The final rule also differs from the proposal by dropping the word "permit" from the terms being defined and using the terms "administratively complete application" and "complete and accurate application" for editorial reasons. The terms will then be general enough to apply to permits, revisions, renewals, and transfers, sales, and assignments of permit rights if specified in the individual rules relating to those subjects.

APPLICANT

The word "applicant" was located in previous Section 770.5 and is derived from the definition in Section 701(16) of the Act. It is defined to mean any person seeking a permit from a regulatory authority to conduct coal exploration or surface coal mining and reclamation operations. No comments were received on the term "applicant," other than those in the previous discussion on coal exploration. The definition remains unchanged from that in the proposed rule and previous rules except that it is relocated from Section 770.5 to Section 701.5 since this definition is applicable to the entire permanent program and not just to Subchapter G.

APPLICATION

The word "application" was relocated from the previous Section 770.5 to Section 701.5 since this definition is also applicable to the entire permanent program and not just to Subchapter G. This term is defined to mean the documents and other information filed with the regulatory authority for issuance of permits (and revisions, renewals, etc.) for coal exploration or surface coal mining and reclamation operations.

No comments were received on the term, other than those in the previous discussion on coal exploration. OSM decided to clarify that this definition also applies to permits; revisions (significant or not); renewals; and transfers, assignments, or sales of permit rights. Individual regulations dealing with each of these actions specify which type of application applies.

IRREPARABLE DAMAGE TO THE ENVIRONMENT

Another phrase whose definition is changed from the definition in the previous rules is "irreparable damage to the environment," previously at Section 786.5. The phrase "or has not been" (corrected by the applicant) has been eliminated and irreparable damage to the environment is defined as limited to damage that cannot be corrected by the applicant. This phrase was suspended from the definition by OSM on November 27, 1979, at *44 FR 67943.* The phrase "or has not been" (corrected by the applicant) in the previous definition could include a wide variety of violations that should not be classified as "irreparable damage to the environment" since they could be reasonably corrected. Also, such language is unnecessary, since under final Section 773.15(b)(1), a permit may not be issued, except under limited circumstances, if there exists any violation which has not been corrected. In addition, the conditions at the violating operation would be subject to cessation orders issued in accordance with Sections 840.13 and 843.11. Those sections cover the need for the applicant to abate the violation or to pursue a direct administrative or judicial appeal. For a permit to be issued, either of such courses of action must occur for the permit findings to be made by the regulatory authority. Therefore, the phrase "or has not been" need not be included in the final definition. The proposed definition of "irreparable damage to the environment" has also been modified to provide that such damage must have been caused in violation of the Act, the regulatory program or 30 CFR Chapter VII. This modification clarifies that the "laws, rules, or regulations" referenced in the proposed rules are those which pertain to surface coal mining and reclamation operations under the Act, these regulations and the regulatory program and are not unrelated requirements.

There were several comments concerning the definition of the phrase "irreparable damage to the environment." Some commenters simply concurred with the proposed change. One of them said that the definition recognized that some environmental effects are acceptable during coal recovery and proper planning allows mitigation of undesirable effects. OSM agrees with these assessments of the effects of the proposed rules.

Several commenters indicated the proposed definition should include the phrase "has not been corrected," as well as violations that "cannot be corrected." One commenter stated that Congress, in Section 510(c) of the Act, meant to include damage that would indicate an intent not to comply with provisions of the Act, and thus, the commenter believed the agency would be concerned with damage that could be, but has not been corrected, since that damage would indicate willful noncompliant behavior. Another commenter thought: (1) That the term was surely intended to allow the regulatory authority to prohibit mining by people who willfully disregard surface coal mining law and refuse to correct severe violations which they have caused, (2) that the point to the willful violation investigation was not

that damage cannot be corrected but that persons are so irresponsible that they willfully refuse to take corrective measures, and (3) that if an operator corrects damage during litigation on the pattern of willful violations, the definition is not met and the regulatory authority could find that there was no demonstrated pattern of willful violations. Another commenter said that irreparable damage to the environment is not "only that damage which is unlawful that the regulations prohibit" and stated that, if a cessation order is authorized, the regulatory authority does not need to find a violation.

OSM agrees with the commenter that Congress meant to include consideration of noncompliance with provisions of the Act when reviewing permit applications under Section 510(c) of the Act. Noncompliant behavior would be discovered through Section 773.15(b)(1), which would cover violations which could be, but have not yet been, corrected. However, the definition of "irreparable damage" is not intended to implement the outstanding violation requirements of Section 510(c) of the Act. There is no need then, to include correctable violations in the definition of irreparable damage to the environment, particularly when it is contrary to the commonly understood meaning of irreparable. The regulatory authority will be able to prohibit mining by people who disregard surface coal mining laws and refuse to correct any violations. In accordance with Section 773.15(b)(1), such applicants may not be issued a permit. On the other hand, if the operator corrects such violations, he or she would not necessarily be precluded from obtaining a permit unless another required finding could not be made, i.e., based on a demonstrated pattern of willful violations which result in irreparable damage to the environment exists. Such willful violations are those of such significance as to cause damage that cannot be corrected. This result is in accord with congressional intent.

PRINCIPAL SHAREHOLDER

The definition of "principal shareholder" remains unchanged from the definition in previous Section 770.5. Under the definition, "principal shareholder" means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock. No comments were received on the definition of "principal shareholder."

OSM has adopted this definition as proposed.

PROPERTY TO BE MINED

The proposed definition of the term "property to be mined" in Section 701.5 was identical to the definition in the previous rules located at Section 770.5. Several comments were received that stated that the term "property to be mined" should be deleted and replaced with the term "estate to be mined." The commenters believed that the term "estate to be mined" would be more correct legally and would eliminate the potentially confusing language that could be read as referring to "surface estates underneath lands" and "mineral estates on lands" which are within the permit area.

Other commenters believed that the definition of "property to be mined" should limit mineral estates to the coal which will be mined. They believed there is no need to include interests which would not be affected, such as oil and gas. Commenters also stated that Section 507(b)(1) of the Act limits OSM's authority to require application information to areas which are to be mined and thus argued that the proposed definition went beyond the Act's requirements.

OSM has decided to retain the term "property to be mined," rather than switching to "estates to be mined." "Property to be mined" is the language of Section 507(b)(1) of the Act. "Property" is a generally understood and recognized term. Section 507(b)(1) of the Act requires the legal owners of record of the property to be mined, including the surface and mineral rights, to be listed. The comment suggesting that mineral interests be restricted to the coal which will be mined is rejected. Nothing in Section 507(b)(1) of the Act indicates that the term should be so limited. Rather, other mineral estates which could be affected must be included.

Changes have been made to the definition to eliminate the confusion generated by the proposed phrase "on and underneath lands." The final definition requires inclusion of the estates within the permit area. The area covered by underground workings has been specifically included in the definition of "property to be mined" to reflect that the

area overlying such workings will not necessarily be included in the permit area. See *48 FR 14814,* April 5, 1983, for a discussion of the revision to the definition of the term "permit area."

SUCCESSOR IN INTEREST

The definition of "successor in interest" remains unchanged from the definition in the previous Section 788.5. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights. No comments were received on the definition of "successor in interest." OSM has adopted this definition as proposed.

TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

The definition of "transfer, assignment or sale of permit rights" remains unchanged from the definition in the previous rules, located in previous Section 788.5. The definition of "transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority. No comments were received on this definition. OSM has adopted this definition as proposed.

VIOLATION NOTICE

The definition of "violation notice" as proposed was the same as the definition located in previous Section 770.5. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. One commenter suggested that the definition of "violation notice" should be modified to mean any written notification "from which enforcement action follows, from a governmental entity.'

This comment was rejected as redundant because a violation notice is an enforcement action. OSM adopted the definition as proposed.

WILLFUL VIOLATION

The definition of "willful violation" located in previous Section 786.5 was revised in proposed Section 701.5 to parallel the definition in Section 843.5 that was adopted at *47 FR 35637* (August 16, 1982).

Other than editorial changes, OSM has adopted this definition as proposed.

SECTION 701.11 APPLICABILITY.

Section 701.11(d) deals with the applicability of the interim and permanent regulatory program standards to existing structures. The final rule modifies this section by replacing the references to previous Section 786.21 with references to final Section 773.15(c)(6) to be in accord with these final rules. The final rule also changes the language in Section 701.11(d)(2)(i) to be in accord with revised terminology used in the coal mine waste rule.

B. PART 773 -- PERMITTING PROCESS

SECTION 773.1 -- SCOPE AND PURPOSE.

Final Section 773.1 consolidates and replaces the "Scope" provisions in previous Sections 770.1, 771.1, 786.1, and 788.1 and the "Objectives" provisions in Sections 771.2, 786.2, 787.2, and 788.2. Final Section 773.1 simply provides a general description of subject areas covered by Part 773, including obtaining and receiving permits; coordinating with other laws; public participation; conditions required for approval of permits; permit decision and notification and permit term and right of renewal.

Previous Section 770.2, which set out the general objectives for the entire subchapter, was deleted. This provision was unnecessary and did not need to be stated in the final rules. Previous Sections 770.4, 770.12, 771.19, 786.4, and 788.3 outlined responsibilities under the regulatory program. Because the substance of these sections is included elsewhere, they are deleted as unnecessary. Responsibilities under the permitting requirements are not so complex that they need to be stated separately. The legal requirements for State programs are adequately covered by Subchapter C in Part 731 and the requirements and responsibilities to obtain and comply with permits are covered elsewhere in 30 CFR Chapter VII (e.g., see Section 773.11).

One comment was received on proposed Section 773.1. This comment suggested that this section provide minimum requirements. OSM agrees that these rules provide the minimum requirements for a permit processing system and that State regulatory authorities may add to them. OSM has added the word "minimum" in Section 773.1 to clarify this point. OSM has added to Section 773.1 the phrase "coordinating with other laws" in line with the retention in Section 773.12 of the requirement of previous Section 770.12 to coordinate with other statutes (this requirement had been proposed for deletion).

SECTION 773.10 - INFORMATION COLLECTION.

This section codifies approvals by the Office of Management and Budget. No comments were received on this section.

SECTION 773.11 - REQUIREMENTS TO OBTAIN PERMITS.

SECTION 773.11(a) - ALL OPERATIONS.

The requirements of previous Section 771.11 are included in final Section 773.11(a). This section requires a permanent program permit for each person operating a surface coal mining and reclamation operation on and after 8 months from the effective date of a permanent regulatory program within a State with the exception of certain initial program operations as set out in Paragraph (b). The final rule, by relying upon the effective date of the permanent program as the starting point for the 8-month period, clears up an ambiguity in the previous rule. The final rule recognizes that some State programs did not become effective immediately upon Secretarial signature. In Section 506(a) of the Act, Congress intended to refer to the date the applicable regulatory program actually became effective, rather than any alternate date. The change also allows the rule to have a broader application, since the effective date includes Federal programs developed for a State, as well as approved State programs. In most instances, this clarification results in a difference of a few weeks.

The requirements of previous Sections 771.21(b)(1) and 771.21(a)(2) are deleted under the final rules as unnecessary and redundant of the requirements of final Section 773.11(a).

Previous Section 771.21(b)(1) merely required a person proposing to conduct a surface coal mining operation to file an application within a time set by the regulatory authority as sufficient to allow review of the application. Regulatory authorities may continue to set such times if desired. The prohibition in Section 773.11(a) against mining prior to issuance of a permanent program permit should be sufficient incentive for applicants to file their applications early and will ensure that operations are not conducted without proper authorization.

Likewise, there is no need to specify that if any existing operation authorized under the initial program fails to meet the 2-month deadline for filing a permanent regulatory program permit application, then the application shall be treated as an application for a new operation (previous Section 771.21(a)(2)). The requirements of Section 773.11(b)(2) are clear that initial program operations may obtain the privilege of continuing to operate beyond the 8-month grace period only if they meet the requirements of that section, including submittal of an application within 2 months of the effective date of the permanent regulatory program. If that deadline is not met, then the operation will be treated as any other new application under the permanent regulatory program.

One commenter supported the changes proposed in Section 773.11(a) and now adopted. Another commenter agreed with the proposed use of the term "effective date" rather than the date of the Secretary's approval.

Another commenter indicated that regulations must establish that continued operation after 8 months from the effective date of primacy (with limited exception for initial permitted operations) occurs only if there is a valid permit issued under the permanent program as required by Section 502(d) and 506(a) of the Act. The commenter stated that the proposed language would allow continued operation beyond the 8-month period under an initial program permit. The commenter also stated that previous Section 771.21(a)(2) should not have been deleted, since that provision mandates the 2-month deadline for permit applications of Sections 502 and 506 of the Act which are not flexible. The commenter believed that the rules must implement the deadlines of the Act to provide notice that permit applications not filed by the proper time would not allow continued operation after 8 months.

OSM disagrees with the commenter's conclusion that Section 773.11 would allow violations of the Act. Except under the limited circumstances acknowledged by the commenter, the proposed and final regulatory language correctly refers to a permit being required on and after 8 months after the effective date of the program. Specifying the time for filing such an application as was done in previous Section 771.21(a)(2) is unnecessary since, by its very terms Section 773.11(b) provides the only exceptions. Thus, the final rule provides that in order to operate on and after 8 months after State program approval, each surface coal mining and reclamation operation must either have obtained a valid permit issued under the permanent regulatory program or qualify, under Section 506(a) of the Act and final Section 773.11(b), to continue to operate under the initial program until the permanent program permit has been initially approved or denied. Standards for qualifying to continue such operations are discussed in reference to Section 773.11(b)(2) below.

One commenter believed statutory resolution was probably necessary to meet a 6-month deadline for review and approval of permits.

The rules as promulgated here should facilitate permit reviews in States and statutory resolution is not needed.

SECTION 773.11(b) - CONTINUATION OF INITIAL PROGRAM OPERATIONS.

Final Section 773.11 (b)(1) and (b)(2) provide two circumstances under which an existing operation authorized under the initial regulatory program could continue to operate under the permanent regulatory program.

SECTION 773.11(b)(1).

Final Section 773.11(b)(1) contains the requirements of the previous Section 771.13(a), with minor editorial changes. Under final Section 773.11(b)(1), when a State program receives final disapproval, including judicial review of the disapproval, existing surface coal mining and reclamation operations could continue in accordance with the initial program provisions and Section 502 of the Act until promulgation of a complete Federal program for the State. During this period, a State may not issue any new surface coal mining permits, but permits that lapse may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

Several commenters proposed to have the phrase, "within the specified permit area" deleted from Section 773.11(b)(1) to reflect the scope and effect of a permit which lapses between State program disapproval and Federal program promulgation. They pointed out that Sections 502(f) and 504(d) of the Act, in describing which operations may continue, refer to a "permit" not "permit area." They believed that: (1) An operator can continue operating pursuant to a permit, even if it is beyond the permit area, (2) the Federal program promulgation will be a lengthy process and the operator should exercise his rights during the Federal program development process, (3) the deletion of the phrase "within the specified permit area" would prevent unjustly penalizing the operator for the regulatory authority's failure and would allow an operator to continue beyond permit boundaries if he ran out of coal.

OSM has not experienced any difficulty under the previous rule, which contained the same language. Since each state with current surface coal mining operations have received approval or conditional approval of their permanent programs, except Georgia and Washington which have Federal programs, OSM does not expect that any mining operations will become subject to this section. Therefore, no change, other than editorial changes, have been made to the final rule and it is adopted as proposed.

SECTION 773.11(b)(2).

Section 502(d) of the Act requires the regulatory authority to process and grant or deny permanent program permits within 8 months from the date of primacy for operators with an initial program permit who wish to continue to operate after the end of the 8-month period. However, Section 506(a) of the Act and Section 773.11(b) recognize the possibility that this task may be unachievable in some States due to workload limitations and potential administrative delay in permit processing. As a result, the Act provides that certain operators may continue to operate after the 8-month period under their existing initial program permits.

Final Section 773.11(b)(2) establishes requirements for continued operation under initial program permits after the implementation of the permanent regulatory program. This section includes the requirements of previous Sections 771.13(b) and 771.21(a)(1). The final rule provides that any person authorized to conduct surface coal mining and reclamation operations under the initial regulatory program or under a permit issued or amended by the regulatory authority in accordance with the requirements of Section 502 of the Act, may conduct those operations beyond the 8-month period following permanent regulatory program approval, if certain conditions are met. The final rule represents a change from the previous rule by providing for the continuation of operations that were authorized to conduct mining under the initial regulatory program but which may not have been required to have a permit under the initial program. This change recognizes that some existing operations required to have permits under the permanent regulatory program may not have been required to have permits under the preexisting State initial regulatory program.

In accordance with Section 502(d) of the Act, final Section 773.11(b)(2) establishes three requirements for the continuation of an initial program operation while the operator is awaiting approval of its permit application under the permanent program. These include that: (1) A permanent regulatory program permit application is filed within 2 months from the effective date of the permanent regulatory program, previously provided for in Section 771.21(a)(1);

(2) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit, previously included in Section 771.13(b) (2) and (3); the mining operations are conducted in compliance with the initial program authorization or permit and the requirements of the Act, the initial regulatory program, and applicable State statutes and regulations, previously included in Section 771.13(b)(3). For clarification, it should be noted that reclamation, bonding, and bond release procedures of the State's initial program would continue to apply to such operations permitted under the initial program, regardless of whether that operation continues under the permanent program. These initial program activities could continue within the area covered by the initial program permit. Any new area not covered by the initial program permit could not be affected until a new permanent program permit covering that area was issued.

As discussed under Section 773.11(b)(3), initial program permits can still be issued after the effective date of primacy as long as the application was received prior to such date. Such permitted operations would be treated like other continuing initial program operations. Thus, no operator would be penalized by delays in the initial program permit approval process.

One commenter supported all the changes made in proposed Section 773.11(b)(2)(i).

Another commenter believed that Section 773.11(b)(2)(i) exceeds the Act's requirements in allowing unpermitted initial program operations to continue during the permanent program without permit, bond, or compliance with Sections 515 and 516 of the Act. Section 506(a) of the Act was cited, and the commenter stated that the Act makes no provision for continued operation of "unpermitted but authorized" mining operations after 8 months. Likewise, it was asserted that Section 502(a) of the Act limits continued operation to holders of initial program permits issued pursuant to Section 502(a) of the Act. The commenter believed that operations not "regulated by the State" prior to the initial program cannot continue into the permanent program until 8 months from "primacy" without valid permanent program permits.

OSM does not agree with the commenter that final Section 773.11(b)(2) exceeds the authority granted by the Act, but believes it follows the requirements of the Act. As the commenter noted, Section 506(a) of the Act allows a person to continue to conduct operations under a permit issued in accordance with Section 502 (a) of the Act beyond the 8 month period under certain conditions. Section 502 (a) and (b) of the Act limits its requirements that an operation obtain an initial program permit to operations on lands on which such operations are regulated by a State. Section 502(d) specifies that all operators of surface coal mines, whether or not they are required to have an initial program permit, must file an application for a permanent program permit not later than 2 months after approval of a regulatory program if they expect to operate on and after 8 months after approval. Congress intended all initial program operations to come under the same permitting provisions in the permanent program. Congress' intent in regard to this exception was expressed as follows: "The Committee did not want to force current operations to shut down simply because of administrative delay." (S. Rept. 95-128, 95th Cong., 1st Sess., 1977, p. 74.) It would be inequitable and contrary to this intent to deny some operators the privilege of continuing operations solely because they were not required to have a permit during the initial program. Thus, under Section 773.11(b)(2) an operation may continue pursuant to the combined requirements of Sections 502(a) and 506(a) of the Act.

One commenter supported all the changes made in proposed Section 773.11(b)(2)(ii), which required that a timely and administratively complete application be filed as a prerequisite to being allowed to continue operating beyond the 8-month period without first receiving a permanent program permit.

Another commenter complained about the change to requiring the filing of an "administratively complete application" rather than a "complete application" within 2 months from the effective date of primacy. The commenter believed that the application must contain all the information needed to meet the requirements of Sections 507, 508, and 509 of the Act and that since an administratively complete application must only "address" each requirement, the proposed rule is an invitation to delay. The commenter stated that the deletion of the requirement that the "complete application" for a permanent program permit be filed in a timely manner, so as to allow the regulatory authority to process and approve or deny an application within 8 months, invites interminable delay in processing of permanent program permits and favors last-minute filing of permits.

The commenter believed the Act is unambiguous in the requirement that operators seeking to operate after 8 months from primacy must: (1) have obtained a valid initial program permit, (2) have submitted a "complete" permanent program permit application within 2 months from program approval, and (3) have had a permit granted or denied within 8 months. The commenter quoted page 86 of House Report (95-218 95th Cong., 1st Sess., 1977) as follows: "Operators are required to obtain permits 8 months after approval of a State program." According to the commenter, the House emphasized that the 8-month deadline was for receipt of a decision on the permit, not the time for filing one. The commenter claimed that the section-by-section analysis of Section 506 stated "eight months after approval of a State Program of [sic] implementation of a Federal program, all operators must have received a permit issued in compliance with the Act under the requirements of this section." The commenter also cited the Senate Report as supporting this interpretation (S. Rept. 95-128, 95th Cong., 1st Sess., 1977, p. 74.)

The commenter believed OSM lacks any authority to waive the time frames in Sections 502(d) and 506 of the Act and should require full compliance by all State programs. The commenter believed that the proposed rule waived the 2-month and 8-month deadlines without necessity and that the regulations should not be drafted to remedy a unique situation, in one particular State, that needs no remedy.

The commenter continued that the OSM proposal for an administratively complete application for a permit triggers public participation in Section 773.13 and requires the public to review a skeletal permit application. The commenter stated that Congress intended that complete and accurate permit applications be reviewed by both the agency and public. The commenter believed that the concept of an administratively complete application makes citizen participation a farce and makes a mockery of Section 513 of the Act and Congressional intent. The commenter suggested that the section should read "timely and complete permit application" not "timely and administratively complete permit application."

Further explanation of the term "administratively complete application" can be found under the definition of the term in Section 701.5. An administratively complete application for a permit would not be skeletal but would contain all information necessary to initiate processing and provide for public and technical review. An administratively complete application must address all the requirements in Sections 507 and 508 of the Act. These requirements are what the Act requires of an applicant at the time of submittal. Further information may need to be submitted if public and technical review indicates a need for such information. Sections 502(d), 506, 507, and 508 of the Act do not require, or even mention the concept of, a complete application. A complete application is required only at the end of the permit review process so that the regulatory authority possesses sufficient information to make an informed and rational decision on whether to issue or deny the permit. Section 510(a) of the Act requires the regulatory authority to make its decision based on a "complete mining application and reclamation plan," and Section 510(b)(1) of the Act addresses and "accurate and complete" application. OSM has chosen to define a "complete and accurate application" in Section 701.5 of these rules. The concept of an "administratively complete application" has been added to clarify to operators that the application submitted must contain information relating to all the requirements of Sections 507 and 508 of the Act and the implementing rules in Subchapter G.

Contrary to the commenter's assertion, Section 502(d) of the Act does not require that the application be complete or satisfy every detail of the application requirements upon initial submission to meet the 2-month deadline. The regulatory authority will need time to review applications to make "administrative completeness" determinations. Consequently, OSM has decided not to require that an application be administratively complete at the end of the 2-month time. Therefore, proposed Section 773.11(b)(2)(ii) is not adopted and Section 773.11(b)(2)(i) simply utilizes the language of Section 506(a) of the Act and requires that an application be filed within the 2-month period. Additionally, the final rule deletes the requirement in previous Section 771.13(b)(1) which allowed a person conducting surface mining and reclamation operations to continue beyond 8 months if a "timely" and complete application had been filed. The concept of "timely" is redundant in light of the 2-month filing period.

The rule is not an invitation to delay, but an approach to ensure quality review of permanent program permit applications without penalizing existing operations for administrative processing requirements. The provisions are in accord with the requirements of the Act. In conducting the reviews of permanent program permit applications for existing operations, the regulatory authority must, as a minimum, make a good faith effort to review the applications within the 8-month period and, if unsuccessful, must expeditiously complete the review after the end of the 8 months.

One commenter believed that Section 773.11(b)(2)(ii) failed to provide adequate procedures and safeguards to ensure that premature "initial" administrative decisions will not cause irreparable economic harm to existing initial program operations. According to the commenter, the existing mines would be operating in complete or substantial compliance with all performance requirements (or be closed for noncompliance), and therefore there would be scarcely any compelling need to close such mines pending their appeals. Even if the initial decision is later reversed, the operation could be destroyed economically if it must close pending appeal.

The commenter suggested different permit review procedures for "existing" and "planned" mines. Existing mines, it was asserted, deserve more due process and must not be subjected to initial adverse decisions on the same grounds that would justify adverse decisions for planned mines. According to the commenter, an existing operation should not be given an initial adverse decision based on "insufficient data" or "unresolved questions" concerning the permit application, but as much time as is reasonably necessary to collect additional data should be allowed. If the regulatory authority and applicant disagree concerning the scope of required data, an interlocutory appeal should be granted on those disagreements. In no event should an initial permit denial be issued on anything less than a finding of unacceptable environmental effects.

OSM is sympathetic with the commenter's concern. However, Section 506(a) provides that mining may continue only until the "initial administrative decision" is rendered. Final Section 773.11(b)(2)(ii) implements this requirement.

OSM disagrees that applications from existing operations should be reviewed on different grounds than future permanent program operations. Applications from both types of operations must be reviewed under the same provisions of the Act and regulations and the decisions on both must be based on the same grounds.

No comments were received on Section 773.11(b)(2)(iii) which was proposed Section 773.11(b)(2)(iv) and is similar to previous Section 771.13(b)(3). This section is adopted as proposed with two editorial changes. The word "applicable" is added to clarify the reference to State statutes and the entire provision has been changed to the singular rather than the plural.

SECTION 773.11(b)(3).

Final Section 773.11(b)(3) was proposed as a new section which would clarify when initial program permits could be issued during the permanent program. The final rule allows the regulatory authority to issue initial program permits after the implementation of the permanent program only when the application was filed prior to the effective date of that permanent program. The final rule recognizes that an operator who has in good faith submitted an application for a permit under the initial program should not be penalized by rejection of that application solely due to the approval of the State's permanent regulatory program. An operator who receives an initial program permit under this provision will be treated as other initial program operators are for purposes of Section 506(a) of the Act and Section 773.11(b). Such an operator will be allowed to conduct operations beyond the 8-month period if he has met the requirements of Paragraph (b)(2) of this section. This procedure is an equitable method of treating those applicants who submitted applications under the initial program, the review process of which is interrupted by establishment of the permanent program. Such applicants expected to be authorized to mine, at least for some period, under the initial permit. The promulgation of the permanent program should not prevent the regulatory authority from issuing the initial program permit if a valid application was made during the initial program.

Although one commenter supported the change made by the addition of this section, another commenter found this section vague and confusing and believed that if OSM allows "clearing out" of initial permit applications, it must set certain conditions, as follows: (1) The application should be timely and complete, as implied by Section 502 of the Act. It asserted that preliminary applications filed before primacy cannot be followed by a full application after primacy, since filing does not satisfy Section 506(a) of the Act. A less than complete initial application should be rejected on filing, and then a complete permanent program application filed. (2) OSM should establish a reasonable time to process such applications so as not to dilute the ability to process permanent program applications. (3) The applicant must file in a timely fashion and the agency must reject last-minute applications not meeting substantive initial program requirements. (4) The commenter believed initial program applications not filed in a complete and timely manner should be processed and reviewed under approved permanent program procedures and standards and should not be allowed to continue beyond 8 months from the program's effective date without a permanent program permit.

Section 502 of the Act does not set any standards for timeliness or completeness of initial program permit applications. Instead, Section 502(a) of the Act states that no person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands regulated by a State unless he has obtained a permit from the State's regulatory authority. The specific provision of the Act, Section 502(b), which addresses when initial program permits may be issued, does not expressly preclude the issuance of such permits after the approval of a State program. Other situations are addressed, such as final disapproval of a State program or promulgation of a Federal program. However, the Act does not set a cutoff date for the issuance of initial program permits upon State program approval. Thus it is proper for OSM to determine that an application submitted during the initial program can and should be processed as would any other initial program permit application. The application should have all the information required for a permit under the initial program. An application returned as incomplete after primacy must be refiled as a permanent program permit application. Any additional requirements attendant to a permanent program permit application are not relevant until primacy, at which time the applicant would have to submit a permanent program permit application within 2 months to qualify for the Section 773.11(b)(2) exception.

An operation with a permit issued in accordance with Section 502 of the Act must cease mining if at the end of the 8-month period, the requirements of Paragraph (b)(2) of this section are not met or the permittee does not yet have a permanent program permit.

SECTION 773.11(c) - CONTINUED OPERATIONS UNDER FEDERAL PROGRAM PERMITS.

Final Section 773.11(c) deals with continued operations under Federal program permits after approval of a superseding State program. This section is similar to previous Section 771.15, with some editorial and organizational changes. Section 773.11(c)(1) provides that a permit issued under a Federal program shall be valid under any later State program approved by the Secretary. Section 773.11(c)(2) continues the provision that gives the Federal permittee the right to apply for a State permit to supersede the Federal permit. Previous Section 771.15 (b) and (c) are revised in final Section 773.11(c)(3). As rewritten, final Section 773.11(c)(3) no longer requires the State regulatory authority to issue an order requiring compliance with additional requirements of the State program as previously required by Section 771.15(c)(1). Rather, the final rule simply requires the regulatory authority to provide written notice to the permittee of any additional requirements, an opportunity for a hearing, an opportunity to resubmit the application in whole or in part, and a reasonable time to conform operations to the additional requirements.

No comments were received on proposed Section 773.11(c), and OSM has adopted this section as proposed with minor editorial corrections.

SECTION 773.11(d) - CONTINUED OPERATIONS UNDER STATE PROGRAM PERMITS.

Final Section 773.11(d) deals with continued operations under State programs permits under a superseding Federal program. The final rule parallels previous Section 771.17 with minor editorial and organizational changes.

SECTION 773.11(d)(1).

Section 773.11(d)(1) provides that a permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

No comments were received on proposed Section 773.11(d)(1). The final rule is adopted substantially as proposed with a revision indicating that this section applies to both approved and conditionally approved State programs since conditional approval confers on a State authority to issue permanent program permits.

SECTION 773.11(d)(2).

Section 773.11(d)(2) requires the Director of OSM, immediately following promulgation of a Federal program, to review permits issued under a previously approved State program to see that requirements of the Act, 30 CFR Chapter VII, and the Federal program are not violated. This section also provides procedures for the Director to follow is the permit is found to have been granted contrary to the requirements of the Act.

One commenter pointed out that in proposed Section 773.11(d)(2) the discretionary term "may" was used even though the Secretary or Director has a mandatory duty to review all permits issued under a previously approved but superseded State program as required by Section 504(d) of the Act. OSM agrees with the comment and has replaced "may" with "shall" in final Section 773.11(d)(2). Otherwise, Section 773.11(d)(2) remains unchanged from the proposed section with one editorial correction to clarify that it is the State permits which are to be reviewed.

SECTION 773.12 - REGULATORY COORDINATION WITH REQUIREMENTS UNDER OTHER LAWS.

Several comments were received requesting OSM to include previous Section 770.12 (b) and (c), requiring coordination of the permit process with permits issued under other Federal statutes.

Commenters believed the regulatory authority should be required to coordinate its permit review process with the statutes and agencies listed in previous Sections 770.12 (b) and (c). One commenter stated the regulatory authority should coordinate the review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended, the Migratory Bird Treaty Act of 1918, as amended, the National Historic Preservation Act of 1966, the Bald Eagle Protection Act, as amended, and the Fish

and Wildlife Coordination Act, as amended. The commenter believed it is essential to coordinate with these acts to protect fish and wildlife resources and threatened and endangered species and to avoid adverse impacts on these resources. Another commenter stated that the permit review process conducted by the regulatory authority must be coordinated to ensure adequate protection of various resources whose protection is governed by another agency. He believed that maximum coordination to eliminate duplication and to assure coherency is the key. The commenter also stated that the Act requires coordination between the State permit review and other laws irrespective of whether they require permits or not. The commenter noted that the Act is replete with references to other agencies and laws to be considered and referenced in the review process.

OSM agrees that the permit review and approval process should be coordinated with actions taken to comply with other Federal statutes. OSM has, therefore, retained the requirements of previous Section 770.12(c) in these final rules as Section 773.12 and added the Migratory Bird Treaty Act and Bald Eagle Protection Act as suggested by the commenter. The requirements in previous Section 770.12 (a) and (b) for coordination with the permit processes under other Federal laws have not been included in final Section 773.12 because the rules for approval of State programs in Section 731.14(g)(9) require such coordination and all Federal or State governmental agencies with applicable permit issuing authority will be notified under Section 773.13(a)(3)(ii).

SECTION 773.13 - PUBLIC PARTICIPATION IN PERMIT PROCESSING.

Final Section 773.13 provides requirements for processing permits and for public participation in the review of permit applications.

SECTION 773.13(a)(1).

Final Section 773.13(a)(1) includes the public notice requirements of previous Section 786.11(a). The final rule adds language to make it clear that public notice of applications for significant revisions of permits and renewals is required. The final rule also provides that a copy of the advertisement must be submitted to the regulatory authority.

One commenter stated that this section seemed to ask for four publications of the advertisement but required a copy of only one advertisement. The commenter suggested the language should be changed to require submission of a copy of the "proposed" advertisement to the regulatory authority and that this would clarify that this paragraph requires only that the content of the advertisement be submitted with the initial application. The proof of four publications would still be submitted under Section 778.21.

Another commenter opposed changes to this section when read with the new definition of "administratively complete application." One option the commenter seemed to propose would be to require a 2-week public notice upon submittal and a 4-week notice once the application was determined to be complete and accurate.

OSM agrees with the commenter that the regulatory language concerning the submission of the advertisement may be confusing. The suggested addition of the word "proposed", however, would not alleviate the confusion since it could be interpreted to allow the applicant to make substantive changes in the advertisement after it was submitted to the regulatory authority. Instead, OSM has added the phrase "as it will appear in the newspaper" to clarify that only one copy showing the content of the public notice is required.

The suggestion of an initial 2-week public notice followed by a 4-week notice is rejected. The Act provides no basis for a second comment period at the end of the regulatory authority's review. OSM's final language is in accord with Section 513(a) of the Act.

The final rule adds the term "permit renewal" to this section to clarify the applicability of the section to renewals, as proposed under proposed Section 773.27(b)(3).

SECTION 773.13(a)(1)(i).

Section 773.13(a)(1)(i) provides that the advertisement concerning an administratively complete application shall contain the name and business address of the applicant and is adopted as proposed. No comments were received concerning Section 773.13(a)(1)(i).

SECTION 773.13(a)(1)(ii).

Section 773.13(a)(1)(ii) revises the description or map of the permit area which was required under previous Section 786.11(a)(2) to streamline the regulatory language and emphasize that the description must be sufficient to enable local residents to readily identify the permit area. The regulatory authority will determine what will provide the most useful information. This does not exclude a legal description, if considered necessary or appropriate by the regulatory authority.

Several comments were received concerning the proposed use of the word "exact" to refer to the location and boundaries of the proposed permit area. Two commenters suggested deleting "exact" location from the advertisement. They believed it is impractical in a newspaper and that a general location should be sufficient to notify interested parties where the proposed permit area is located. Another commenter suggested deletion of the word "exact" and use of the statutory language "precise location." He believed OSM should clarify that this needs to be only "exact" enough to allow identification of the proposed permit area.

Other words commenters proposed for deletion in this section were "map" and "clearly," because the map may be reviewed with the copy of the permit application available for public inspection.

Commenters believed that the proposed description required under Sections 507(b) and 513 of the Act must contain at a minimum such locators as towns, rivers, streams, local landmarks, and roads, routes, streets, and distance measurements. They believed Congress demanded a newspaper notice that would "acquaint local residents with the location of the operation," as stated on page 92 of House Report 95-218 (95th Cong., 1st Sess., 1977). The commenter said that, according to this report, the requirement was designed in response to the committee's awareness of the severe difficulty which local people frequently experience in attempting to investigate the nature of impending surface mine operations. He believed that the proposal violated Congress' intent that OSM set the national minimum standards for State programs. The commenter stated that the States cannot require a legal description or any other information beyond that required in Section 773.13, due to States having "no more stringent" clauses.

OSM has accepted the comment to use the language of the Act insofar as the word "exact" was concerned. Section 513(a) of the Act uses the word "precise," so the rule has been changed accordingly. Editorial changes were made to show clearly that this description or map must be sufficient to allow local residents to readily identify the permit area.

The word "map" was not deleted. The final rule does not require a map, but allows the applicant to use a map or a description. Since a map is occasionally more easily understood by local residents than a legal description, the final rule continues to allow use of a map to describe the proposed permit area. The purpose of including a map or description in the advertisement is to allow members of the public to determine where the proposed operation will be located, so they may decide if they want to review the entire application. Thus, the map included in the application would not serve the same purpose. Similarly, the maps required by Section 507(b) of the Act do not need to be the same maps used in the advertisement because the permit map serves a different purpose than the advertisement.

The term "clearly" was not deleted because it is considered important that any description or map be "clear" to meet the intent of Section 513 of the Act.

The comment suggesting that various "locators" be mandated in the final rule has not been accepted since Section 513(a) of the Act does not specifically identify how the location is to be described and such details are more appropriately determined by the regulatory authority based on local conditions. OSM agrees that the purpose of advertising the location of the proposed operation is to allow local residents to investigate impending surface coal

mining operations. For this reason, the regulatory language is phrased so that the standard which the applicant must meet is to describe the location precisely enough to allow local residents to readily identify it. The appropriate landmarks or other identifiers cannot be specified in a nationally uniform rule since they will necessarily differ depending on the location of the proposed operation. The existence of "no more stringent" clauses in some State statutes is not persuasive. Such clauses merely indicate that in those States the regulatory authority will choose not to exercise the discretion given it under Section 505 of the Act. The final rule is sufficiently specific to meet the requirements of Section 513 of the Act. Further, the final rule allows the regulatory authority to specify "other information which would identify the location" if necessary or appropriate.

Several comments were received concerning the proposed deletion in Section 773.13(a)(1) of the reference to the USGS 7.5-minute quadrangle map contained in previous Section 786.11(a)(2)(iii). One commenter believed that this map reference and latitude-longitude coordinates must be required. The commenter thought that many regulatory authorities would not have discretion to require identification of the appropriate USGS map due to clauses in statutes requiring the State regulations to be "no more stringent" than those of OSM. The commenter believed that: (1) This map is a standard reference essential for interested individuals, and particularly agencies and local governmental authorities, to be able to locate the operation and reference it to the topography of the area, (2) its deletion does not provide adequate notice of the precise location of the proposed site required by Section 513(a) of the Act, (3) since the applicant must submit the information and reference to the USGS map in which the area referenced lies, the deletion affords no "relief" to the operator at the cost of interfering with citizen participation.

OSM disagrees with these comments. By requiring the advertisement to be sufficiently descriptive to ensure that local residents can readily identify the proposed permit area, the final rule assures that the advertisement serves its statutory role. If an agency needs a topographic map of the area, it will have access to the index and the maps.

Again, this rule allows the regulatory authority to require this information if it desires. The commenter is incorrect in stating that this map is required by Section 513(a) or that the applicant must submit the information and reference the map under Subchapter G. Section 513(a) of the Act requires the advertisement to include the precise location and boundaries of the land to be affected, which is what Section 773.13(a)(1)(ii) requires. The operator does not need to provide other information, unless required by the regulatory authority.

SECTION 773.13(a)(1)(iii).

Section 773.13(a)(1)(iii) requires an advertisement to contain the location where a copy of the application is available to the public.

One commenter believed that the proposed phrase "public review" does not agree with the statutory language of Sections 507(b)(6) and 507(e), which requires that the application be available for "public inspection." The commenter believed the term "inspection" connotes opportunity for "less cursory" analysis of the permit application, which is consistent with Congressional intent to involve the public actively in all phases of regulatory activity, and cited pages 88-89 of House Report 95-218 95th Cong., 1st Session 1977.

OSM disagrees that either public "inspection" or public "review" would affect the allowable analysis of the application. Nevertheless, in response to the comment the final rule has been revised to use the language of the Act, which is "inspection."

SECTION 773.13(a)(1)(iv).

Proposed Section 773.13(a)(1)(iv) would have provided that the advertisement must contain the name and address of the regulatory authority where written comments or requests for informal conferences may be submitted and omitted the word "objections," which was in previous Section 786.11(a)(4).

One commenter suggested that the provision should be amended to "where written comments, objections, or requests . . ." in order to assure notice that the period for filing objections as well as comments has begun or will soon begin. The commenter believed that written comments and objections are two distinct terms.

OSM agrees with the comment and has included the word "objections" in the final rule, which is otherwise identical to the proposed rule.

SECTION 773.13(a)(1)(v).

Final Section 773.13(a)(1)(v) is derived from previous Section 786.11(a)(5). This rule provides that if an applicant seeks to mine within 100 feet of the outside right-of-way of a public road or to relocate (or close) a road, a statement describing the road should be included in the advertisement concerning an administratively complete application. The final rule, however, no longer requires additional public notice regarding mining within 100 feet of the outside right-of-way of a public road or relocating a road if, under 30 CFR 761.12(d), public notice has already been given and a hearing has already occurred concerning the effect on the road. The previous rule, at Section 786.11(a)(5), required such information to be in the newspaper advertisement regardless of whether a hearing had already been held. The final rule eliminates the duplicative notice and hearing requirement where the necessary notice and hearing have already been provided in accordance with the program requirements.

Several comments were received on Section 773.13(a)(1)(v). Several commenters approved of including notice to mine within 100 feet of public road with the initial, rather than a separate, advertisement.

Other commenters suggested deletion of the date and duration of road relocation because it is impractical to know this information at the time the application is filed due to the flexibility of mining schedules.

Another commenter believed that: (1) The exception provided by this rule could be interpreted to say the hearing on road relocation for a prior permit would suffice for a different relocation for subsequent permits, (2) if a road is relocated to a different place, an opportunity for a new public hearing should be provided, and (3) since the proposed rules of Section 761.12(d) allow for closing of roads, so should Paragraph (a)(1)(v) of this section.

Another commenter appeared to object to Section 773.13(a)(1)(v) as he believed it misinterprets the intent of the section and the coordination of previous Sections 786.11, 761.12, and 786.14. He believed that: (1) The purpose of including this information is to allow the broadest spectrum of citizen involvement in the permit process, (2) only one public hearing, after adequate notice and approval of proper authorities, need precede a relocation or waiver of the prohibition on mining within 100 feet of the road, (3) it is unlikely that such a hearing under Section 761.12 will occur prior to the public notice under previous Section 786.11, (4) an informal conference under previous Section 786.14 pursuant to the notice may meet the public hearing requirement of Section 761.12, and (5) the hearing required prior to relocation must be one held under the auspices of the Act, joining specifically the concerns and factors designed to be addressed under the Act.

OSM agrees with the commenters that flexibility of mining schedules might make the timing and duration of relocation (and closing) difficult to predict, and therefore has added the word "approximate" to the final rule. To clarify when a new public hearing regarding a public road is required and when a prior hearing will suffice, OSM added the phrase "for this particular part of the road." OSM agrees to make this section applicable to closing of public roads for consistency with revised Section 761.12(d). OSM agrees with the commenter that only one public hearing need precede relocation [or closing] of a public road, which is what this final rule requires. A hearing held under Section 761.12 would be under the auspices of the Act. These rules allow some flexibility as to when the hearing must be held and, along with Section 773.13(c)(4), allow it to be combined with other proceedings.

SECTION 773.13(a)(1)(vi).

Section 773.13(a)(1)(vi) retains the requirement of previous Section 785.13(g) that if the application includes a request for an experimental practice, the advertisement shall include a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

Several commenters suggested coordinating this section with any changes in Section 785.13.

OSM has coordinated this rulemaking with the one on experimental practices and a notice of a request for approval of experimental practices remains in the final rule, as discussed in the preamble to Section 785.13 *(48 FR 9478,* March 4, 1983).

SECTION 773.13(a)(2).

Final Section 773.13(a)(2) corresponds to previous Sections 786.11 (d)(1) and (d)(2) and provides that a copy of the permit application must be placed on file for public inspection and copying at the courthouse of the county where the mining is proposed to occur or an accessible public office approved by the regulatory authority. This is in accordance with Section 507(e) of the Act which provides the regulatory authority with discretion to approve an alternative filing location. Also, the filing in the public office of applications for significant revisions to a permit and permit renewals under previous Sections 788.12(b)(2) and 788.14(b)(1) is included in final Section 773.13(a)(2) and made consistent with that for filing permit applications.

One commenter was concerned that, under the proposal, the regulatory authority could approved alternative places for filing permit applications without considering the accessibility to the public of such filing. The commenter stated that alternative filing (other than the county courthouse) is important, particularly in the West, where county lines often do not parallel road networks and settlement patterns, and coal fields and distances are great; thus, many residents are effectively cut-off from easy access to the county courthouse where an application would be filed. The commenter believed that accessibility is the paramount consideration for the choice of alternative filing locations by the regulatory authority under Section 507 of the Act, that the consideration of an appropriate public office was intended to refer to accessibility, as is reflected in the language of Section 517(f) of the Act, and that availability and convenience of access was the intent of the local filing provision of Section 507(e) as well, and cited page 92 of House Report 95-218 (95th Cong., 1st Sess., 1977). Another commenter agreed and thought the proposed change would reduce the public's ability to understand and participate in the permitting process because applications could be filed in locations that may not be readily accessible to the public. OSM agrees with the commenters that accessibility to local residents is the intent behind the local filing requirement, and has changed the terminology in the final rule from "appropriate" to "accessible."

One commenter proposed that OSM delete the requirement to file subsequent revisions of applications with the public office at the same time the revision is submitted to the regulatory authority. Another commenter argued that the term "significant revision," when used in proposed Section 773.13, was confusing because it could refer to changes made in the application after it was determined to be administratively complete and before it was determined complete and accurate.

An additional commenter was confused by the dual use of the term "revision" and believed that the last sentence in Paragraph (a)(2) conflicted with proposed Section 773.25 concerning permit revisions. Several commenters felt that any submittal of "significant revisions" should be the basis for restarting the comment period, although they felt such a second review period would not need to be as extensive as the 4-week notice and full 30-day comment period.

One commenter's suggestion was either: (1) To allow the public an opportunity (e.g., 10, 20, or 30 days) to comment on a change (revision) once it has been filed with the county recorder and regulatory authority; or (2) to allow the applicant to change (revise) the permit application up to 20 days after the last newspaper notice of Section 773.13(a), and to file with the regulatory authority and county recorder in the same manner as an original permit application. The application would be received by the regulatory authority and county recorder within time limits.

To clarify the difference between a significant revision to a permit under proposed Section 773.25 and a revision to an application during the review process prior to permit issuance, OSM has cross-referenced significant revisions to final Section 774.13 and used the word "change" rather than "revision" when discussing changes to a permit application submitted during processing. Such changes must be filed with the public office at the same time as they are submitted to the regulatory authority. The suggestion to delete this requirement is rejected. The final rule also adds the term "renewal" to clarify that, in keeping with Section 774.15(b)(3), this section applies to renewals as well.

If any change to the application should occur which would significantly impact the public review process, the regulatory authority always has the discretion to reopen the comment period. The need for reopening the comment period is best left for the regulatory authority to decide for each case.

SECTION 773.13(a)(3).

Final Section 773.13(a)(3) requires written notification to government agencies by the regulatory authority upon receipt of an administratively complete permit application and is similar to previous Section 786.11(b), except that an "other identifier" may be used as an alternative to the application number.

One commenter wanted proposed word "reviewed" changed to the word "inspected." This change was made for the same reasons as given under the discussion in the preamble to Section 773.13(a)(1)(iii).

One commenter again stated that the phrase "administratively complete" is legally objectionable.

The comment on administrative completeness is discussed in the preamble to Section 701.5 under "administratively complete application."

A commenter believed that the regulatory authority notification must indicate the applicant's intention to mine "a particularly described tract of land," not merely a "described tract" and that the rule must be revised to contain the particularity of description necessary to intelligently involve other agencies and authorities in permit review.

OSM did not accept the comment regarding the description of the land because the term "particularly" is duplicative, as it relates to "described tract of land." The description of the land proposed to be mined should be sufficient to enable the notified agencies to identify the location of the land. The term "particularly" does not add any further clarity to the provision.

Another comment on this section was that in States that use permit application numbers, application numbers should be used as the identifier at all times when the regulatory authority is giving notice to other agencies of government.

The permit application number would be the easiest identifier, and presumably the one used, but in this final rule that choice is left up to the regulatory authority.

The final rule also clarifies that this section applies to renewals, as is stated in Section 774.15(b)(3).

SECTION 773.13(a)(3)(i).

Section 773.13(a)(3)(i) specifies that the written notification mentioned above must be provided to local governmental agencies with jurisdiction over the proposed operation or an interest in the area to be mined. These agencies shall include, but not be limited to, planning agencies and sewage and water treatment authorities as well as water companies. This paragraph combines the requirements of previous Section 786.11(c) (2) and (3) and conforms the notification requirements to those of Section 513(a) of the Act. Interested Federal and State agencies will continue to be notified under Section 773.13(a)(3)(ii). Final Section 773.13(a)(3)(i) is primarily consolidation of the previous rules.

No comments were received concerning Section 773.13(a)(3)(i).

The final rule revises the proposal by providing for notification of local agencies with an interest in the proposed operation for consistency with final Section 773.13(a)(3)(ii) and Section 513(a) of the Act.

SECTION 773.13(a)(3)(ii).

Final Section 773.13(a)(3)(ii) is similar to the previous Section 786.11(c) (1) and (4). It provides for the notification of those Federal and State agencies which are part of the permit coordinating process of sections 503(a)(6) and 504(h) of the Act or Section 773.12 or those agencies with an interest in the proposed operations. Because the local Soil Conservation Service district of the U.S. Department of Agriculture has responsibility for verifying prime farmland aspects of any permit under the Act and because the U.S. Army Corps of Engineers district engineer has responsibility for protection of wetlands and issuance of permits under Section 404 of the Clean Water Act *(48 FR 21466,* May 12, 1983; 33 CFR Parts 320-330), The notification has also been required to include the local offices of these agencies.

The National Park Service was concerned that it be given an adequate opportunity to prevent mining on any lands within the boundaries of units of the National Park System when persons may be determined to possess valid existing rights (VER) to mine within such units. In response to this concern, OSM has agreed to ensure that the National Park Service receives notice of permit applications in which it may have an interest. This notification at the beginning of the application review process will enable the National Park Service to take any action at its disposal, including possible acquisition of the property, to protect the National Park System. In addition to this notification, the National Park Service and the U.S. Fish and Wildlife Service, as appropriate, are to be given notification under final 30 CFR 761.12(b)(2) of any separate applications for a determination that a person has valid existing rights for any lands within the boundaries of units of the National Park System and the National Wildlife Refuge Systems. See *48 FR 41350,* September 14, 1983.

One commenter believed that written notification should be sent to Federal, State, and local agencies with an interest in various facets of the proposed operation, in order that the purposes of the Act are met, and that lack of coordination would result in the inadvertent issuance of permits that will not meet the purposes of the Act.

Other commenters wanted to add written notification to State and Federal fish and wildlife agencies. They believed that limiting notification to agencies with jurisdiction would jeopardize coordination between the regulatory authority and State and Federal fish and wildlife agencies.

Several other commenters wanted to delete from notification the local U.S. Department of Agriculture's Soil Conservation Service district office and U.S. Army Corps of Engineers' district engineer since: (1) Their inclusion implies all listed agencies must be notified; (2) not all mines are required to notify agencies listed in the regulation; (3) the regulatory authority should have discretion to notify appropriate agencies when necessary; and (4) if these agencies fit the criteria, they will be notified anyway.

The final rule retains the phrase "or those agencies with an interest in the proposed operation" when describing the agencies to receive written notification of an application. This addition, along with the specification of State and Federal fish and wildlife agencies and the historic preservation officer, assures that legal mandates to protect fish and wildlife and historic sites can be met in accordance with final Section 773.12. OSM has chosen not to require notification of the U.S. Environmental Protection Agency or similar State agencies since the phrase "permits and licenses applicable to the proposed operation" should cover the applicable State or Federal agency.

Coordination with other agencies is covered by this section, by final Section 773.12, and by reference to Section 503(a)(6) of the Act. Reference to Section 504(h) was added for Federal program coordination. As the preamble to the previous permanent program rules *(44 FR 15097,* March 13, 1979) states, the determination of which governmental units are sent such notice is "a task for each regulatory authority familiar with the governmental and administrative structure in its particular State." Thus, OSM did not list other governmental entities.

The comments to delete specific agencies were considered, but OSM believed that these specific agencies should be specified as stated here and in the preamble to the proposed rule. The commenter is incorrect in stating that the applicant would have to notify these agencies. This regulation and the Act requires the regulatory authority to send the written notification.

OSM agrees that the regulatory authority should have the discretion to notify other appropriate agencies when necessary. This rule does not preclude the regulatory authority from exercising such discretion.

SECTION 773.13(b) - COMMENTS AND OBJECTIONS ON PERMIT APPLICATIONS.

Final Section 773.13(b) deals with the opportunity for various persons and entities to submit written comments and objections on permit applications and consolidates the requirements of previous Sections 786.12 and 786.13.

SECTION 773.13(b)(1).

Final Section 773.13(b)(1) contains the requirements of previous Sections 786.12 (a) and (b) concerning the timing and allowing submittal of comments by the public entities notified of the application by the regulatory authority under Section 773.13(a)(3). For consistency in handling of written submissions, OSM added the word "objections" to clarify that that type of submission was not excluded.

One commenter believed that, in order to be consistent with the proposed changes, OSM must clarify that the opportunity to submit written comments and objections applies to both "initial or revised" permit applications. The commenter noted that revisions which are significant are subject to notice and comment according to Section 511(a)(2) of the Act.

Other commenters stated that the regulatory authority should not have latitude to establish a "reasonable timeframe" for submitting written comments on permit applications from public entities. The time should be a minimum, specific time allowance, such as submittal within 30 days after publication of newspaper notice, as was proposed in Section 773.13(b)(2).

OSM decided to accept the comment concerning adding significant revisions and to also include renewals, as required by final Sections 774.13 and 774.15. This clarifies that public entities may submit written comments or objections on any application for a permit, significant revision to a permit, or renewal of a permit within the time set by the regulatory authority.

OSM considered combining Sections 773.13 (b)(1) and (b)(2) so that both would have a 30-day comment period after newspaper publication, but decided to use the language of Section 513 (a) and (b) of the Act which makes a distinction between the local governmental agencies and the general public. Under the final rule, the regulatory authority has the discretion to have the two comment periods run concurrently.

SECTION 773.13(b)(2).

Final Section 773.13(b)(2) provides for written objections from heads of Federal, State, or local governments agencies and persons having interests which are or may be adversely affected by the proposed mine to be submitted to the regulatory authority. These provisions were found in previous Section 786.13(a)

One commenter believed that: (1) The addition of the proposed new phrase "by the issuance of the permit" does not agree with the statutory language, potentially interferes with the intent of the Act, and should be deleted, (2) objections should be allowed to be made by a person with an interest that is or may be adversely affected by any aspect of the proposed operation, or by a particular failure in the permit approval, and (3) the adverse impact is the decision of the agency on the permit application.

OSM agrees with the commenter that it is the agency action which should be compared to a person's interests to determine if he may file objections. OSM has changed the proposed regulatory language to allow any person with an interest which is or may be adversely affected "by the decision on the application" to file written objections. The addition of such a phrase is necessary to clarify the reference point for a person's interests. The phrase furthers the intent of the Act and is consistent with the statutory language. Under the final rule, a person with an interest which is or may be adversely affected may object to any aspect of the permit application. OSM also added the terms "significant revision to a permit" and "renewal of a permit" to parallel final Section 773.13(b)(1).

SECTION 773.13(b)(3).

Final Section 773.13(b)(3) would combine previous Sections 786.12(c) and 786.13(b), with minor editorial changes. No substantive change is intended by the consolidation.

One commenter noted that the term "objections" should be added to Paragraph (b)(3)(i), since Paragraph (b)(3) references both comments and objections. Another commenter wanted to make this information publicly available, as proposed in Paragraph (b)(3)(ii), but not necessarily at the office where the permit is filed. Another commenter stated that "public review" should be changed to "public inspection" in Paragraph (b)(3)(ii).

OSM accepted the comment suggesting the addition of the term "objections" to this section and has made the appropriate change. OSM decided to clarify the public office with which the regulatory authority is required to file such comments and objections. The public office must be the same as the one where the application is filed so that the public will have available for review a record of the comments and objections filed with the regulatory authority. Public "review" was changed to "public inspection," as discussed in the preamble to Section 773.13(a)(1)(iii) above. The word "permit" was deleted from Paragraph (b)(3)(ii) in order to clarify that applications for significant revisions and renewals are included within the generic term "application."

SECTION 773.13(c) -- INFORMAL CONFERENCES.

Final Section 773.13(c) would replace previous Section 786.14 relating to informal conferences. Previous Section 786.14(a) has become final Section 773.13(c)(1) while previous Section 786.14(b)-(d) have become Section 773.13(2)-(4), respectively.

SECTION 773.13(c)(1).

Final 773.13(c)(1) identifies who may request an informal conference and what the request must include.

One commenter suggested that the phrase in Section 773.13(c)(1) be expanded to "the request shall contain such information required by regulatory authority."

OSM decided not to adopt this suggestion as the regulatory authority has the discretion to require additional information if necessary, so long as any additional information requirements do not inhibit public participation. OSM has decided to clarify that this section applies to applications for significant revisions and renewals. In conformity with the change made in paragraph (b)(2) of this section, OSM also changed the standing provision in this paragraph to refer to interests affected "by the decision on the application." No other substantive changes have been made from the proposed rule which was similar to the previous rule.

SECTION 773.13(c)(2)(i).

Final Section 773.13(c)(2) parallels previous Section 786.14(b) and provides for the holding of the informal conference. Its location is provided for in Paragraph (c)(2)(i) of this section. No comments were received concerning this section.

SECTION 773.13(c)(2)(ii).

Section 773.13(c)(2)(ii) requires the regulatory authority to notify the applicant and other parties of the date, time and location of the conference. In addition the public is to be notified by a newspaper advertisement at least 2 weeks before the conference. No comments were received concerning this section. The rule has remained unchanged from the proposed rule which is similar to previous Section 786.14(b)(2) except that direct notification to the parties has been added.

SECTION 773.13(c)(2)(iii).

Section 773.13(c)(2)(iii) provides for access to the permit area for parties to the informal conference, which was included in previous Section 786.14(b)(3).

One commenter noted that the proposal at Section 773.13(c)(2)(iii) replaced the phrase "mine plan area" with "permit area," in the context of access to the area for purposes of gathering information prior to the informal conference. The commenter believed that the proposal unduly restricts the pertinent area insofar as collection of hydrologic data is concerned. The commenter stated that the mine site and surrounding area is "relevant" to the permit decision and access to that larger area must be assured.

Other commenters suggested that a phrase should be inserted which would ensure that any related data gathering on the permit area prior to the established date of the conference would be limited to issues raised in Paragraph (c)(1)(i) for requesting the conference.

The term "mine plan area" was remanded by the District Court for the District of Columbia. In re: Permanent Surface Mining Regulation Litigation, No. 79-1144, at 35 (D.D.C. February 26, 1980), and clarified at 57 (May 16, 1980). The term "mine plan area" was subsequently removed from the regulations on April 5, 1983 *(48 FR 14814)*. In the same rulemaking, a "permit area" was defined to include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit. "Adjacent area" was defined in that final rule to include the area outside the permit area where a resource could be expected to be adversely impacted by the proposed operation. The reader is referred to the April 5, 1983 rulemaking for additional discussion on these issues.

In the context of an informal conference, the adjacent area would include the area where the hydrologic balance could be impacted by the operation. Because the collection of information pertaining to hydrologic impacts outside the permit area could be relevant to an informal conference on a permit application, OSM has accepted the commenter's suggestion in part. It is quite possible that the applicant will not own or have the right to enter all of the "adjacent area" on which conference participants might wish to collect information. If the applicant does not itself have the right to enter certain lands, then it cannot grant entry to other conference participants. Therefore, a provision is added to the rule providing that the regulatory authority may arrange with the applicant for access by conference parties to the adjacent area to the extent that the applicant has the right to grant such access. The owners of the surrounding area retain their legal rights to determine access to their property. The regulatory authority could have no control over this.

No change in the proposal is deemed necessary in response to the comment suggesting limiting the data gathering to issues raised by the person requesting the conference. The rule clearly states that the access granted would be for the purpose of gathering information relevant to the conference. The regulatory authority may adopt whatever procedures are necessary to clarify the extent of issues relevant to the conference.

SECTION 773.13(c)(2)(iv).

Section 773.13(c)(2)(iv) deals with administrative procedures for an informal conference. No comments were received concerning Section 773.13(c)(2)(iv), which was included in previous Section 786.14(b)(4) and the rule has been adopted as proposed.

SECTION 773.13(c)(3).

Final Section 773.13(c)(3) provides for cancellation of an informal conference. Final Section 773.13(c)(3) includes the provisions of previous Section 786.14(c) with minor editorial changes. No comments were received concerning Section 773.13(c)(3) and the rule has been adopted as proposed.

SECTION 773.13(c)(4).

Final Section 773.13(c)(4) includes the provisions of previous Section 786.14(d). Section 773.13(c)(4)provides that informal conferences under Section 773.13(c) may be used as the public hearing on road relocation or closing under Section 761.12(d).

One commenter suggested that Paragraph (c)(4) delete the word "uses" since Section 761.12(d) does not require a hearing on uses of roads. OSM has accepted this comment and has added the word "closing" to conform with Sections 761.12(d) and 773.13(a)(1)(v).

SECTION 773.13(d) - PUBLIC AVAILABILITY OF PERMIT APPLICATIONS.

Final Section 773.13(d) deals with public availability of applications for permits, revisions, renewals, and transfers, assignments or sales of permit rights.

SECTION 773.13(d)(1).

Final Section 773.13(d)(1) includes the requirements of the previous Section 786.15(a), stating the general rule that applications will be available to the public, except that the requirement for a written request for public inspection has been dropped as superfluous. Information is to be available at "reasonable times." The regulatory authority may set up guidelines including written requests, to provide such access. However, written requests are not necessary in all cases. The term "open" has also been changed to "available" and a provision added to the opening language referring to exceptions to the general rule provided in Paragraphs (d)(2) and (d)(3).

One commenter commended the agency for deleting the requirement that a written request precede public inspection, since he felt it accomplished nothing but delay in access.

Another commenter stated that Section 773.13(d)(1) should apply to all applications, not just permit applications and applications for significant revisions, since Section 507(b)(17), 507(e), 508(a)(12), and 508(b) of the Act are relevant to confidentiality of certain types of information for all such applications.

OSM agrees with the commenter that this section should apply to all types of applications and has made the appropriate changes.

Another commenter wanted public "review" changed to public "inspection".

The final rule changes the term "public review" to "public inspection" to be in accord with Section 507(e) of the Act and Section 773.13(a)(2).

SECTION 773.13(d)(2).

Final Section 773.13(d)(2) follows previous Section 786.15(a)(1) and provides that certain information pertaining to the coal seam and other physical data shall be available to persons whose interests may be adversely affected by the decision on the application. A new provision has been added to the final rule indicating that information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

One commenter took issue with the statement in the proposed preamble that there is no substantive change from previous Section 786.15(a)(1). In the preamble to proposed Section 773.13(d), the restricted availability paragraph was described as providing that "certain information pertaining to the coal seam and other physical data shall be available only to persons whose interests may be affected." The commenter believed that Congress intended to keep only the information pertaining to the coal seam itself confidential.

The commenter reviewed Sections 507(b)(17), 507(e), and 508(b) of the Act and concluded that the language of

Section 507(b)(17) of the Act does not restrict the availability of application information regarding "coal seams, test borings, core samplings, or soil samples" to persons with an interest which is or may be adversely affected. Rather, the commenter believed Section 507(b)(17) of the Act guarantees access to such environmental information to persons with an interest which is or may be adversely affected, notwithstanding the provisions of Section 508(b) of the Act which would otherwise require that such information be held in confidence. He noted that Section 507(e) of the Act requires that the application be placed on public file, except for information pertaining to the coal seam itself.

One commenter believed that the title of proposed Section 773.13(d)(2), "Restricted Availability," should be deleted. The commenter also noted that the proposed regulation did not contain the term "only," as did the corresponding proposed preamble. He suggested that the preamble should be revised to state that Section 773.13(d)(2) would require that certain information pertaining to the coal seam and other physical data shall be available to persons whose interests may be affected, notwithstanding the provisions of Section 773.13(d)(3)(ii).

One commenter stated that the proposed Section 773.13(d)(2), as reflected in its title and the preamble, conflicts with Section 507(e) of the Act and is not a necessary interpretation of the Act when Sections 507(b)(17), 507(e), 508(a)(12), and 508(b) are read together. The commenter believed: (1) That the restrictive interpretation is not necessary to protect trade secrets or other vital proprietary information, since equivalent information may already be available to a competitor from public files or can be obtained by subsurface investigation of adjacent properties, (2) that the restrictive interpretation would increase regulatory costs to all applicants by denying them access to existing subsurface information and thereby requiring that detailed subsurface investigations (core drilling and test borings) be conducted on each and every proposed permit area rather than relying upon equivalent information as allowed by Section 508(a)(12) of the Act, and (3) that such a restrictive interpretation would prohibit regulatory authorities from making regional environmental analyses of overburden and coal characteristics based on information in permit applications and making the results available to industry and the public and would prohibit regulatory authorities from releasing overburden and coal data to interested State and Federal agencies.

Two commenters recommended that information on overburden obtained through test borings, core samplings, and soil samples be made available to the public and that only information on the coal seam be held confidential or restricted under Section 507(b)(17) of the Act.

Another commenter recommended adding a qualifier, "subject to Paragraph (d)(3)" to assure that this information will be kept confidential since the nature of the information is such that it must be kept confidential.

Another commenter questioned the meaning of the two phrases "information pertaining to coal seams" and "person with an interest which is or may be adversely affected." The commenter believed that the first phrase is too broad and includes data on coal that is a trade secret, and that inclusion of the second phrase would result in everyone meeting the adversely affected standards.

A suggestion made by another commenter was that the definition of "interested persons" should include anyone concerned with the analysis of a coal seam to determine its acid-forming potential, as well as anyone concerned about the thickness of a coal seam to determine the potential for subsidence and hydrologic disruption.

In response to the comments on the proposed title of this section, OSM has retitled the paragraph "Limited Availability" to point out the distinction the Act places on the availability of certain information to persons with an interest which is or may be adversely affected.

OSM disagrees with the commenters who believed that the information covered by Section 507(b)(17) of the Act must be on public file under Section 507(e) of the Act. Section 507(e) contains a general statement of availability of permit applications. Section 507(b)(17) contains restrictions on this general availability for information required by that particular subsection. Read together, the two sections provide standards for general availability, limited availability, and confidentiality of differing types of information. The rules implementing those statutory standards are included in final Section 773.12 (d)(1), (d)(2) and (d)(3)(i).

Section 508(b) of the Act provides an additional standard for the confidentiality of information submitted under that section. Thus, information submitted under section 508 of the Act is presumed to be confidential unless required to be on public file under State law, except that certain coal seam information must be held in confidence under Section 508(a)(12) of the Act. These standards are included in Section 773.12 (d)(3)(i) and (d)(3)(ii) of the final rule.

OSM recognizes that there is an overlap between the information required to be included in an application under Sections 507(b)(17) and 508(a)(12) of the Act. Thus, while Section 508 of the Act would presume the confidentiality of information resulting from test borings, Section 507 of the Act provides that similar information is to be made available to persons who may be adversely affected. Final Section 773.12(d)(2) clarifies the relationship between these sections of the Act.

The final rule provides, in accordance with Section 507(b)(17) of the Act, that information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. However, the commenter who objected to the preamble of the proposed rule was correct in noting that this "limited availability" under the Act does not prohibit a State from making information on test borings available as part of the public record. Additionally, under Section 508 (a)(12) and (b) such information would not be confidential if it were required to be on public file pursuant to State law. The final rule recognizes this and adds a provision to final Paragraph (d)(2) specifically stating that such information shall be made available to the public if it is required to be on public file pursuant to State law.

OSM disagrees with the commenter's three justifications on why the information should be open to the public. Whether the information is actually kept secret from competitors or whether the same information is available from other sources is not relevant to this rule. Nor is the potential cost to competitors of collecting similar information relevant so far as the limited or restricted information is concerned. In addition, all necessary regional environmental analyses can be made within the limits of this rule.

OSM agrees in part with the comment to qualify the information subject to the restrictions in Paragraph (d)(3) described below. OSM agrees that information pertaining to the coal seam should be subject to restriction in Section 773.13(d)(3)(i) that the physical and chemical properties of the coal be kept confidential. OSM does not agree that the restrictions in Section 773.13(d)(3)(ii) on the availability of reclamation plan information that is not on public file pursuant to State law should apply to persons with an interest which is or may be adversely affected.

OSM disagrees with the commenter who objected to use of the phrase "person with an interest which is or may be adversely affected." This is the standard established by Section 507(b)(17) of the Act and is unchanged in the final rule. House Report 95-218, on page 90, states that it is the intent of that committee that the phrase "any person having an interest which is or may be adversely affected" is to be construed to be in accord with the broadest standing requirements enunciated by the U.S. Supreme Court. This rule is consistent with that report. On the other hand, the other suggested definition that "interested persons" should include anyone concerned with the acid-forming potential of the coal seam is potentially broader than such standing requirements and has not been adopted.

SECTION 773.13(d)(3).

Final Section 773.13(b)(3) includes the requirements of previous Section 786.15 (a)(2) in part, (a)(3), and (b). Section 773.13(d)(3)(iii) was added to incorporate requirements under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, *16 U.S.C. 470)* for keeping information confidential on the nature and location of archeological resources on public and Indian lands. The final rule has also been revised to indicate that the procedures established to ensure confidentiality must include notice and opportunity to be heard for persons both seeking and opposing disclosure. This language has been added to clarify the minimum due process requirements for such decisions.

One commenter wanted to allow the regulatory authority not to restrict access to information if State law does not allow restricting access.

One commenter approved of the addition of Section 773.13(d)(3)(iii), which allows information on archeological resources to be protected by the regulatory authority.

The comment on not restricting access to information if State law does not restrict access is covered by Section 773.13(d)(2). Exceptions to this are limited to those provided for in paragraph (d)(3).

SECTION 773.15 - REVIEW OF PERMIT APPLICATIONS.

SECTION 773.15(a) - GENERAL.

Final Section 773.15(a) generally includes the provisions of previous Sections 786.17(a)(1) and 786.23 setting out the general provisions governing regulatory authority review of applications. Provisions in previous Section 786.23 dealing with the periods for review of applications from holders of interim program permits after approval of the permanent regulatory program have been deleted. OSM has worked with State regulatory authorities to establish appropriate time limits. Deletion of these provisions in the regulations reduces excess verbiage and reduces long-term confusion in interpreting the regulations.

The listing in previous Section 786.23(b)(2)(ii) of considerations for establishing a time period for review of permits when no informal conference has been held is deleted. The regulatory authority has the discretion to establish a reasonable time for processing permits based upon the entire State program. The listed items are not necessarily the only items that should be considered by the regulatory authority.

Comments on Section 773.15(a) which discuss the requirements for a complete application and approval or denial within 8 months are addressed in the preamble to final Section 773.11(b)(2)(ii). No other comments were received on this section and the section is adopted as proposed, with a clarification that this section also applies to applications for a revision or a renewal of a permit.

Final Section 773.15(a)(2) includes the requirement of Section 510(a) of the Act that the applicant has the burden of establishing that his application for a permit or revision of a permit is in compliance with the requirements of the regulatory program.

No comments were received on Section 773.15(a)(2). The only change from the proposed rule is to clarify that this provision applies to applicants for permits and permit revisions.

SECTION 773.15(b) - REVIEW OF VIOLATIONS.

SECTION 773.15(b)(1).

Section 773.15(b)(1) includes the requirements of previous Section 786.17(c) pertaining to violations, with some changes. Section 773.15(b)(1) provides that if the regulatory authority determines that the applicant has any outstanding notices of violation of the Act or any Federal or State rule pertaining to air or water environmental protection, the regulatory authority shall require additional information from the applicant. This information may consist of either: (1) Proof that the violation has been or is being corrected to the satisfaction of the agency which issued the violation notice, or (2) showing that the applicant is in good faith pursuing an appeal of the validity of the violation. The regulatory authority will make the finding required in this section based on information provided in the permit application pursuant to Section 778.14(c) and any other information available to the regulatory authority.

One commenter stated that each permit or operation should stand alone and any violation occurring on one operation should not have any bearing on an application for a permit for a different operation.

Another commenter stated that proposed Paragraph (b)(1) needed an editorial change to move the words "the Act" to the end of the phrase to clarify that any violation of the Act will trigger the provision, not just violations of the Act related to air or water pollution.

Section 510(c) of the Act requires the applicant to list all notices of violation incurred by it within the past three years on other operations. The section prohibits issuance of a permit unless the applicant shows that any outstanding violations have been or are being corrected. Thus, the Act clearly requires that each permit cannot stand alone but must be evaluated in light of the applicant's prior history of operations.

OSM agrees that any violation of the Act triggers this section and has changed the section to clarify this requirement. OSM has also modified the language to clarify that this section is a finding in accordance with Section 510(c) of the Act.

SECTION 773.15(b)(1)(i).

Section 773.15(b)(1)(i) is consistent with previous Section 786.17(c)(1). Section 773.15(b)(1)(i) requires that the applicant submit proof that any outstanding violation has been or is being corrected.

One commenter stated that the language of Section 773.15(b)(1)(i) should reflect Section 510(c) of the Act, in that the agency with jurisdiction over the violation must be satisfied with the correction of the violation, while the regulatory authority must be satisfied with the proof submitted by the applicant.

OSM agrees with the comment and has changed the language of the final rule to reflect the language of Section 510(c) of the Act.

SECTION 773.15(b)(1)(ii).

Section 773.15(b)(1)(ii) is derived from previous Section 786.17(c)(2) and requires the applicant to provide information to establish that the applicant is pursuing a direct administrative or judicial appeal of an outstanding violation as an alternative to submitting proof that the violation was corrected. In addition, the paragraph states that the proof required under Section 773.15(b)(1)(i) must be submitted if the initial judicial review authority rules against the applicant.

Several commenters proposed to delete the proposed phrase "or terminate any surface coal mining and reclamation operation being conducted under a permit issued pending such review." The commenters believed that Section 510(c) of the Act authorizes permit denial, not termination of operations, and that as proposed, this section raised the questions of: (1) How to terminate an operation when a permit was never issued and (2) how haphazard termination of operations was legally justifiable without a hearing in light of other enforcement vehicles (e.g. show cause orders). The commenters also believed that the provision requiring termination of operations after final denial of relief was unnecessary in this section because the enforcement provisions regarding cessation orders established sufficient safeguards to protect the environment from danger severe enough to require cessation.

Another commenter believed that the Act does not give OSM authority to terminate one permit on the basis of violations on a different permit not being corrected. The commenter believed the regulation should provide that the regulatory authority may issue the permit conditionally pending the outcome of the appeal. Then if the appeal is denied, the regulatory authority could terminate the permit based on the occurrence of the subsequent conditions.

A commenter stated that this section as proposed provided for the applicant to receive a permit and to continue to operate until the final administrative or judicial review authority denies a stay or affirms the violation. The commenter believed that one level of administrative review or judicial review should be provided without penalizing the operator but that any further appeals should not stay permit termination unless the appellate review authority expressly grants a stay.

Another commenter stated that the proposed addition of the word "final" into the phrase "administrative or judicial hearing authority" potentially distorts the intent of Section 510(c) of the Act, which was to avoid penalizing good-faith litigants by denying pending applications. The commenter stated that history reflects that industry will often utilize delay as a tactic.

The commenter urged that delay not be encouraged. The previous rule provided that once a stay was denied or an appeal lost, the "good-faith" clause would no longer operate. The commenter stated that this is consistent with the limited intent of the Senate in passing predecessors of Section 510 of the Act. The commenter quoted the Senate Committee Report: "[T]he Committee also does not intend that a permit applicant can avoid the purpose of Section 510(c) simply by filing an administrative or judicial appeal. It is expected that the regulatory authority will carefully examine those situations where an administrative or judicial appeal is pending in order to ensure to the fullest extent possible that such appeals are not merely frivolous efforts to avoid the requirements of Section 510(c)." S. Rept. 94-28, 94th Cong., 1st Sess., p. 210 (1975); S. Rept. 95-128, 95th Cong., 1st Sess., p. 79 (1977).

According to the commenter, the word "final" as proposed is too ambiguous. He argued that the term would be permissible if construed to mean an appealable order, rather than an interlocutory one, but that if "final" is to be construed to mean that all possible appeals are exhausted, that would impermissibly strain the scope of Section 510(c) of the Act.

OSM agrees with the commenters that the phrase requiring termination of operations should be replaced with a provision allowing conditional approval of the permit pending the outcome of the appeal, which could then be withdrawn if the appeal was unsuccessful. OSM also agrees with the commenter who believed that the intent of Section 510(c) of the Act was not to penalize applicants for uncorrected violations which were being challenged in good faith before administrative or judicial tribunals. OSM has decided to change the language in this paragraph from "final administrative or judicial review authority" to "initial judicial review authority under Section 775.13." Under this language, the applicant will have the opportunity to fully exhaust administrative appeals in good faith. Thus, the final rule deletes the concept of requiring permit denial or proof of corrective action if the final administrative appeal was unsuccessful since there would still be the right of judicial appeal. Since the applicant would not have won on the merits of his arguments up through the initial judicial decision, that is a reasonable cut-off point for the delay in submitting the proof of corrective action to the regulatory authority under this section.

Editorial changes were also made in final Section 773.15(b)(1)(ii).

SECTION 773.15(b)(2).

As noted above, OSM agrees with the commenter that conditional approval of a permit is reasonable pending the outcome of the appeal described in Section 773.15(b)(1)(ii) and has added a new Section 773.15(b)(2) to cover this situation. If the appeal is unsuccessful then the proof required by Paragraph (b)(1)(i) must be submitted immediately. If the applicant does not establish that the violation is being corrected to the satisfaction of the issuing agency then it will have failed to satisfy the condition of its conditional approval and the approval will terminate by its own terms. The applicant must then cease any operations until it receives an approved permit. As the commenter noted, the operations must cease not because the permit was terminated but because the approval was withdrawn. The conditional approval is a reasonable mechanism to allow the regulatory authority to proceed with its review of an application while allowing the applicant to continue to pursue his rights of administrative and initial judicial review.

SECTION 773.15(b)(3).

Final Section 773.15(b)(3) was proposed as Section 773.1515(b)(2) and states that if the regulatory authority determines that the applicant or operator specified in the application has a demonstrated pattern of willful violations of the Act as described in Section 510(c) of the Act, then the application shall be denied. The requirement in previous Section 786.17(d) that the applicant or operator be afforded the opportunity for an adjudicatory hearing on the determination before it becomes final is incorporated in this paragraph.

One commenter referenced this section and stated that each permit or operation should stand alone, and any violations occurring on one operation should not have any bearing on any action affecting another operation. This comment was discussed and rejected in the preamble to final Section 773.15(b)(1) above.

OSM believes that the rule and preamble for this section remain valid as proposed. OSM had modified the language to clarify that this section is a finding in accordance with Section 510(c) of the Act.

SECTION 773.15(c) - WRITTEN FINDINGS FOR PERMIT APPROVAL.

OMISSION OF PREVIOUS RULES FROM THE FINAL RULE

Final Section 773.15(c) contains the requirements for written findings by the regulatory authority prior to permit approval. These requirements correspond to those under previous Section 786.19 regarding the criteria for approval or denial of a permit. In all cases, final Section 773.15(c)(1) requires a written finding that the application is complete and accurate and has complied with all the requirements of the Act and the regulatory program. In addition to this general requirement, Congress required that certain specific findings be made.

The language of the final rule has been substantially revised to omit the previous requirements for written findings not required by Section 510 of the Act. The final rule does not include requirements for written findings that are not specified in the Act and which are unnecessary or redundant. For these reasons, the final rule does not include provisions for written findings required under previous Sections 786.19 (j) and (m) dealing with the effect of the proposed mine on nearby mines and approval of the proposed postmining land use. Previous Section 786.19 (g) and (i) dealing with outstanding violations and a pattern of willful violations have been deleted as redundant of the provisions included in final Section 773.15(b) (1) and (3). The intent of previous Sections 786.17(b) and 786.19(k) concerning submittal of the performance bond or equivalent guarantee prior to issuance of the permit is covered in final Section 773.15(d).

Additional written findings required under Sections 515(b)(16) (for combined surface and underground operations) and 515(b)(20) of the Act (for long-term intensive agricultural postmining land use) are provided in final Section 773.15(c) (8) and (9). By referring to Part 785, Paragraph (c)(8) ensures that the regulatory authority will make all findings required for any special types of mining such as combined surface and underground operations or operations on prime farmlands.

Several comments were received concerning proposed deletions from previous Sections 786.17 and 786.19. One commenter stated that the proposed changes would reduce the public's ability to understand and participate in permitting decisions by omitting the requirement that the regulatory authority make certain written findings that mine permits comply with the law.

Several comments were received regarding the proposed deletion of previous Section 786.17(a)(2) which required the regulatory authority to determine the adequacy of the fish and wildlife plan. Two commenters stated that the deletion of this requirement was improper for underground mines because the fish and wildlife plan for underground mines was not remanded by the district court in In re: Permanent Surface Mining Regulation Litigation, No. 79-1144 (D.D.C., February 26, 1980).

Another commenter stated that the written findings must include a finding, such as that in previous Sections 786.17(c) and 786.19(g), that the provisions of Section 510(c) of the Act regarding violation information have been satisfied before the permit may be issued. This commenter also noted that OSM proposed to delete the findings previously contained in Sections 786.19 (j), (m) and (n), and 786.21 (see final Section 773.15(c)(6)) with the rationale that those sections lack justification in the Act. The commenter asserted that Section 510(b) of the Act requires that the applicant affirmatively demonstrate and the agency find, in writing, that the permit complies with all the requirements of the Act and that the operation will be conducted in accordance with the Act and permit. The commenter believed that the list in Section 510(b) was not intended to be exclusive of other specific but not specified findings and that the legislative intent expressed on page 172 of House Report 95-218 was that there findings were among other showings that would precede approval. The commenter believed that the findings made by the regulatory authority would be needed as a last check to assure that all specific considerations and approvals are complete and also believed that the regulatory authority is required to make a specific finding for alternative postmining land uses in accordance with Section 515(c) of the Act as was provided in previous Section 786.19(m).

Another commenter stated that the regulatory authority must make all approvals prior to permit issuance under Sections 510(b) (1) and (2) of the Act; and the commenter believed that previous Section 786.19(n) would have assured this requirement was met. The commenter thought that practical experience shows that many States and

OSM itself are not aware that findings such as required by Section 510(c) of the Act must be made during the permit process prior to approval. Therefore, the commenter believed that a provision such as prior Section 786.19(n) would not be redundant.

OSM disagrees that these changes in the required findings will reduce the public's ability to understand or participate in permitting decisions. Section 773.15(c) concerns findings made by the regulatory authority on specific aspects of an application which contribute to the decision on whether a permit should be issued. The public will still be able to review all the information in the permit application and participate in the permitting decisions.

OSM has decided not to add a finding concerning the adequacy of the fish and wildlife plan. No such finding is required under Section 510 of the Act and Sections 779.20 and 780.16 were suspended as a result of litigation in In re: Permanent Surface Mining Regulation Litigation, supra, Mem. op. at 38. If at some future time a fish and wildlife plan is reestablished in the permit application requirements, the finding required by Section 773.15(c)(1) will ensure that this plan is accurate and complete and is in accord with all requirements of the Act and regulatory program.

OSM agrees with the commenter that a finding is needed concerning past violations by surface coal mining operations owned or controlled by the applicant. To clarify that final Section 773.15(b) (1) and (3) must be findings by the regulatory authority, the language in those sections has been modified as discussed previously.

OSM agrees that Section 510(b) of the Act is not necessarily an inclusive list of findings. The regulatory authority may add other findings to assure compliance with its program. The legislative history does not indicate, however, that Congress intended other specific written findings to be made by the regulatory authority. Rather, Congress established in Section 510(b) important findings required by the Act. The overall findings of compliance with the Act and regulatory program will ensure that all provisions of the Act are met.

Section 515(c) of the Act does not require a specific finding for alternative postmining land uses and is not the underpinning for revised Section 816.133. Final Section 773.15(c)(1) requires the permit application to be accurate and complete. Section 785.14 provides the permitting requirements for the types of mountaintop removal operations covered by Section 515(c) of the Act. Thus, the findings in paragraph (c)(1), that the permit application is complete and accurate, and in Paragraph (c)(8), that the applicant has satisfied the applicable requirements of Part 785, encompass those special operations as well as the normal postmining land use provisions of Sections 779.22, 780.23(a), 783.22 and 784.15 and negate the need for previous Section 786.19 (j) and (m).

Previous Section 786.19(n) is no longer needed because the finding required by Section 773.15(c)(2) covers the concerns of the previous section. The previous rule was thought to be necessary to ensure that surface mining operations were not conducted where reclamation is not feasible *(44 FR 15101;* March 13, 1979). Section 773.15(c)(2) requires such a finding so there is no need to duplicate that assurance in two findings.

Final Section 773.15(c)(3) in conjunction with Section 761.11(c) negates the need for previous Section 786.19(e), since together these two rules ensure that all lands covered by the unsuitability prohibitions of Section 522 of the Act, covered by previous Section 786.19(e), are excluded from the proposed permit area.

SECTION 773.15(c).

One commenter believed the purpose of written findings is to force a comprehensive assessment of the proposed operation prior to permit issuance and to assure, by requiring specific written findings from the agency, that the mandates of the Act are being followed. OSM does not disagree. The requirement that the regulatory authority make written findings of compliance helps ensure that the regulatory authority has fully completed an assessment of the proposed operation prior to permit issuance and that the mandates of the Act will be followed. However, the same level of permit review is required under the general findings of Section 773.15 (c)(1) and (c)(2) as would be required if more specific findings were required by the regulations. It is the analysis and evaluation performed by the regulatory authority that will determine whether a permit should be issued. The formalization of every component of that analysis in a "finding" does not necessarily ensure that the required work will be or has been done. OMS's experience has shown that the previous rules that contained a larger number of required findings did not assure that all regulatory

authorities would perform their permitting functions properly. More important than the number of findings in the regulations is the commitment of the regulatory authority to execute its functions responsibly. These rules should be looked at as part of OSM's entire program, including oversight, to ensure the Act is followed.

One person commented that the findings in Section 773.15(c) should be required for all revisions, not just significant ones. Another commenter agreed that only significant revisions need written findings, but pointed out that this appears to contradict the Act. The commenter proposed that "revisions be defined as "significant alterations".

OSM disagrees with the comment that findings are required for all revisions. Section 511(a)(2) of the Act requires the regulatory authority to establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; provided that revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. This section of the Act thus gives the regulatory authority discretion in terms of permit application information requirements and procedures for various types of revisions; i.e., those that propose alterations other than in the reclamation plan and those that do not propose significant alterations in the permit. OSM recognizes that Sections 510 (a) and (b), and 513(a) of the Act provide requirements for revisions, but do not differentiate in those sections between the types of revisions. Section 511(a)(2) distinguishes at least two types of revision applications. Because Section 511(a)(2) of the Act is the specific section governing the approval of revision applications, it should, therefore, be used in interpreting the general provisions of Sections 510 and 513 of the Act. This interpretation is supported by comparing the relevant provisions. For instance, although Section 510(b) of the Act requires that all findings be made for "revision applications," the more specific Section 511(a)(2) simply requires a finding that reclamation as required by the Act and program can be accomplished under the revision. The other findings may be required by the regulatory authority in its discretion. The regulatory authority must determine which revisions will be covered by all the permit application requirements, including all the findings of Section 510(b) of the Act. Presumably these will be the most significant revisions. OSM has chosen not to introduce the suggested new term, "significant alterations," because the term "significant revision" is used throughout these rules and is the minimum required of the regulatory authority.

SECTION 773.15(c)(1).

Final Section 773.15(c)(1) follows Section 510(b) of the Act and previous Section 786.19(a). Section 773.15(c)(1) requires a permit application or application for a significant revision of a permit to be complete and accurate and to have complied with all requirements of the Act and regulatory program.

One commenter stated that Section 773.15(c)(1) should use the language of Section 510(b)(1) of the Act, claiming that it is broader and mandates that all requirements of the Act have been met, such as procedural requirements not related to the content of the application.

OSM has modified the regulatory language to clarify that in addition to filing a complete and accurate permit application, the permit applicant must have complied with all of the other requirements of the Act that were applicable prior to permit issuance. These could include procedural requirements attendant to the permitting process. They do not include requirements of the Act that first arise after a permit is issued.

SECTION 773.15(c)(2).

Final Section 773.15(c)(2) is similar to previous Section 786.19(b), but has been revised to more closely follow the requirements of Section 510(b)(2) of the Act. Section 773.15(c)(2) requires a finding that the applicant has demonstrated that reclamation as required by the Act and regulatory program can be accomplished under the reclamation plan contained in the permit application. The word "feasibly" contained in the previous rules has been deleted to be in closer agreement with the statutory language.

No comments were received on Section 773.15(c)(2), and no changes have been made in the proposed rule.

SECTION 773.15(c)(3)(i).

Final Section 773.15(c)(3) consolidates and simplifies the regulatory language of previous Section 786.19(d) concerning areas designated as, or under study for designation as, unsuitable for surface coal mining operations. Section 773.15(c)(3)(i) also clarifies an ambiguity in the previous rules with respect to areas under study for designation by requiring that such areas must actually be covered by a petition submitted to the regulatory authority under 30 CFR Part 764 or 769 to be excluded from the proposed permit area. Study of the proposed permit area prior to the filing of a petition will not, under the final rule, be sufficient to preclude issuance of the permit.

Several commenters believed that the term "subject to study" as proposed should be changed to "under study," as in Section 510(b)(4) of the Act.

Another commenter stated that this section should be clarified to indicate that it does not extend the length of time when a petition may be accepted.

OSM agrees that the phrase "area under study" is more appropriate than "area subject to study" and is in accordance with Section 510(b)(4) of the Act. OSM also agrees this section does not extend the time when a petition will be accepted, as this time period is set in Part 764 for State programs and in Part 769 for Federal lands programs. OSM also made editorial changes in the regulatory language.

SECTION 773.15(c)(3)(ii).

Section 773.15(c)(3)(ii) provides that the regulatory authority must make a finding concerning whether the area is designated as unsuitable or subject to the prohibitions or limitations of Sections 761.11 and 761.12.

One commenter stated that the findings should be as specific as possible with respect to assuring that the operation will not violate Section 522(e) of the Act and that all necessary waivers of the 300-foot and 100-foot buffer zones for dwellings and roads are documented. The commenter felt previous Section 786.19(d) (4) and (5) should be retained.

OSM has included the requirements of previous Section 786.19(d) (4) and (5) in final Section 773.15(c)(3)(ii) by referring to the rules requiring those buffer zones. This paragraph, along with Paragraph (c)(3)(i), assures that an operation will not violate Section 522 of the Act. In this respect, this provision is broader than the previous rule. The final rule also adds a cross-reference to Parts 762, 764, and 769.

SECTION 773.15(c)(4).

Final Section 773.15(c)(4) is the same as previous Section 786.19(f), with changes made in accordance with the numbering system of the final rule. For mining operations where the private mineral estate has been severed from the private surface estate, Section 773.15(c)(4) requires a finding that the applicant has submitted to the regulatory authority the documentation required by Section 778.15(b) establishing the applicant's right to extract the coal by surface mining methods.

One commenter stated that OSM exceeds the requirements of the Act in requiring actual consent of surface owner or documentation. The commenter believed the rule should be limited to the applicant's statement of the basis for entry rights, with no evaluation by the regulatory authority.

OSM disagrees with the commenter that Section 773.15(c)(4) exceeds the requirements of the Act. The requirements set forth in Section 778.15(b) are taken from Section 510(b)(6) of the Act. Section 510(b) of the Act requires a finding to be made on this subject and is implemented by Section 773.15(c)(4).

OSM disagrees that the finding would be sufficient if it was limited to the applicant's statement of its right to enter the surface estate. Section 510(b)(6) of the Act requires a finding that the right to extract coal by surface mining methods has been established.

SECTION 773.15(c)(5).

Section 773.15(c)(5), which is derived from previous Section 786.19(c), requires the regulatory authority to find that it has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The term "general area" in previous Sections 770.5 and 786.19(c) has been replaced by the term "cumulative impact area," as discussed in the revised hydrology rules. The term "mine plan area" has been deleted, in accordance with In re: Permanent Surface Mining Regulation Litigation, No. 79-1144, at 35 (D.D.C., February 26, 1980), as clarified at 57 (May 16, 1980) and replaced with the term "permit area" which is consistent with the necessary information requirements. This change is in accordance with the deletion of the term "mine plan area" from all OSM rules as announced at *48 FR 14814*, April 5, 1983. Other minor editorial changes have also been made. In addition, the term "material" has been added to the phrase "prevent damage to the hydrologic balance" to conform with the language of Section 510(b)(3) of the Act.

OSM added language in this section to clarify that the regulatory authority must determine that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

Several comments were received on the finding that probable cumulative impacts on the hydrologic balance have been assessed. One commenter objected to the assessment of probable cumulative impacts of anticipated coal mining on the hydrologic balance because the regulatory authority is not endowed with the ability to see the future. The commenter believed that an adverse determination on this basis is not justifiable.

Another commenter stated that the proposed rule would not require hydrologic information to be gathered for the entire life of the mining operation in direct violation of Section 507 of Act.

Another commenter stated that unless and until the proposed definition of "cumulative impact area" becomes final, OSM should not utilize the term in this rulemaking. It was proposed by the commenter that reference should instead be made to the assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the area specified in Section 507(b) of the Act. The commenter proposed that when rules further defining that area are finalized, the appropriate language may then be inserted, after notice and opportunity to comment on the definition itself.

Section 510(b)(3) of the Act requires this assessment to be made by the regulatory authority. The regulatory authority may receive the necessary hydrologic information from a coal company if submitted or may collect the data needed to make the assessment itself.

The comment concerning the life of the mining operation reflects a misunderstanding of this section. The cumulative impact area includes anticipated mining, which by definition includes the life of the proposed mining operation, as well as other operations.

OSM disagrees with the comment concerning the use of the term "cumulative impact area." This term was proposed for rulemaking in the same Federal Register as this rulemaking. Notice and opportunity to comment on that definition have been provided. Comments on the use and definition of that term are included in the preamble to the final hydrology rule.

SECTION 773.15(c)(6).

In the proposed permit rule, previous Section 786.21, which contained the findings on existing structures, was proposed for deletion.

One commenter pointed out that reference should be made in the permit approval decision with respect to the need for modification, abandonment, or compliance of existing structures with the requirements of Section 701.11 and Subchapter A of Chapter VII.

OSM agrees with the commenter that a finding is necessary to ensure that existing structures are in compliance with Section 701.11(d) and the applicable performance standards of Subchapters B or K, as determined by Section 701.11(d). This information is not otherwise contained in or referenced in Subchapter G, which specifies the information needed in permit applications. Reference to Subchapter A is not necessary since Section 701.11(d) contains the only provisions in that subchapter relevant to existing structures. OSM has added Section 773.15(c)(6) which requires that the regulatory authority find that existing structures comply with Section 701.11(d) and Subchapters B or K, as applicable, for compliance, modification, and abandonment of existing structures.

SECTION 773.15(c)(7).

Final Section 773.15(c)(7) includes the requirements of previous Section 786.19(h). This section requires a determination that the applicant has paid all reclamation fees required by Subchapter R.

One commenter objected to requiring regulatory authorities to document that the operator has paid all AML fees. The commenter asserted that AML fee collection is an OSM responsibility, and the regulatory authority should not become an enforcement tool for OSM, so this finding should be deleted.

OSM disagrees with these comments and believes that this section reflects the requirements of Sections 402 and 510 of the Act. As stated by OSM at *44 FR 15101*, this section is required in order to make clear that a permit applicant must have a history of compliance with all portions of the Act, not just Title V. The regulatory authority has the responsibility to assure this history of compliance prior to any permit issuance. Thus, OSM must ensure that all reclamation fees have actually been paid. The words "from previous and existing operations" have been added for clarification.

SECTION 773.15(c)(8).

Section 773.15(c)(8) includes the requirements of several previous sections.

As proposed, the paragraph required a written finding by the regulatory authority under Section 515(b)(16) of the Act, for variances from contemporaneous reclamation requirements for combined surface and underground operations, and referred to the special permit application rules in Section 785.18.

A commenter noted that variances from the contemporaneous reclamation requirement for combined operations is not the only finding required by Part 785.

OSM agrees with the comment. Although only Section 785.18 pertains to contemporaneous reclamation requirements for combined surface and underground operations, there are other findings required in Part 785 for other special types of operations. This finding has therefore been broadened so that the regulatory authority must assure that all specific requirements for special categories of mining have been met. The revision of this finding also negates the need for a separate finding that the special permit requirements for alluvial valley floor and prime farmland operations is Sections 785.19 and 785.17, respectively, have been met as was included in proposed Section 773.15(c)(6) and previous Section 786.19(1). Thus, the findings for alluvial valley floors and prime farmlands are incorporated here.

SECTION 773.15(c)(9).

Section 773.15(c)(9) requires a written finding by the regulatory authority of compliance with the revegetation rules if a long-term intensive agricultural postmining land use is to be approved. Sections 816.111(d) and 817.111(d) allow variances from certain of the revegetation performance standards when a cropland postmining land use is approved. This implements the second proviso of Section 515(b)(20) of the Act.

No comments were received on this section. The rule has been adopted as proposed with some editorial changes and a change in the cross-reference to reflect the movement of the variance provision to the revegetation rules from

post mining land use rules.

SECTION 773.15(c)(10).

Previous Section 786.19(o), concerning the protection of endangered and threatened species, was proposed for deletion in *47 FR 27699* (June 25, 1982).

One commenter recommended retention of previous Section 786.19(o) and stated that deletion of this section would put the burden of compliance with the Endangered Species Act, *16 U.S.C. 1531* et seq ., on the operator. The commenter believed that responsibility for compliance with that statute belongs with OSM through oversight evaluation and that the responsibility for determining the effect of surface mining on threatened and endangered species belongs with the regulatory authority. Another commenter noted there would be environmental impacts from elimination of Section 786.19(o).

According to one commenter, deletion of the finding that there would be no impact on threatened or endangered species would reduce the public's ability to understand and participate in permitting decisions.

Another commenter believed that, with respect to protection of threatened and endangered species, the Endangered Species Act and Section 515(b)(24) of the Act require that OSM exercise its full power to provide protection for fish and wildlife and stated that the U.S. Fish and Wildlife Service should have been consulted regarding changes to the findings concerning threatened and endangered species.

OSM agrees with the comments that a finding should be made by the regulatory authority that threatened and endangered species would not be adversely affected by the operation. The substance of previous Section 786.19(o) has therefore been retained as Section 773.15(c)(10). Sections 4 and 7 of the Endangered Species Act of 1973 and 50 CFR Part 402 require actions to be taken to ensure that OSM's activities and programs, including approval of State programs and granting of permits, will not affect the continued existence of threatened or endangered species of their critical habitats. Requiring the regulatory authority to make these findings concerning threatened or endangered species does not exempt the operator from responsibility under the Surface Mining Control and Reclamation Act and the Endangered Species Act not to adversely affect or modify the critical habitats of threatened or endangered species.

SECTION 773.15(c)(11).

Section 773.15(c)(11) is a new paragraph which was added to require the regulatory authority to find that the surface coal mining and reclamation operations will not adversely affect a private family burial ground. Relocation of a private family burial ground is not considered an adverse affect if such relocation is authorized by applicable State laws or regulations. This finding was added in response to comments on the proposed definition of "cemetery" at 30 CFR 761.5 in the proposed rules concerning the unsuitability of areas for surface coal mining and reclamation operations. In view of the exclusion of private burial grounds from the definition of "cemetery," and the purpose of the Act as expressed in section 102(a) to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations, OSM has added the new finding. See the unsuitability regulation rulemaking on Section 761.5 for specific comments *(48 FR 41320,* September 14, 1983).

SECTION 733.15(d) - PERFORMANCE BOND SUBMITTED.

Section 773.15(d) includes the requirements of previous Section 786.17(b) for submittal of the performance bond or equivalent guarantee prior to the actual issuance of a permit. No comments were received on this section, and it has been adopted as proposed.

SECTION 773.17 - PERMIT CONDITIONS.

Section 773.17 lists permit conditions which apply to each permit approved under the regulatory program and issued by the regulatory authority.

One commenter stated that previous Section 786.29(c) allowed the regulatory authority to attach specific conditions to a permit. The commenter believed the proposed language "unless specified in the permit application" would allow certain conditions to be waived, but would not clearly allow additional conditions to be imposed by the regulatory authority. The commenter suggested that an additional subsection be added to Section 773.17 to clarify that the regulatory authority may impose additional conditions as necessary to ensure compliance with the intent and purposes of the Act.

The introductory language is changed in final Section 773.17 to delete the ambiguous language which the commenter thought would allow waiver of conditions to permits. Under the final rule, the conditions of Section 773.17 are applicable to all permits. The regulatory authority may always impose additional conditions as necessary to ensure compliance with the intent and purpose of the Act and its own regulatory program, so repeating that authorization in final Section 773.17 is not necessary. This authority is further recognized in Paragraph (b) of this section.

Another comment was that previous Section 771.19 must be reinstated to ensure the obligation of the permittee to comply with permit conditions.

OSM agrees that the permittee must comply with permit conditions, the Act and the regulatory program. Paragraph (c) of this section has been revised to clearly require such compliance. Additionally, Section 773.11 includes the requirement that permits be obtained for all surface coal mining and reclamation operations and Section 773.17(b) requires that the operation be conducted as described in the approved application. Thus, there is no need to reinstate previous Section 771.19.

SECTION 773.17(a).

Section 773.17(a), which is the same as previous Section 786.27(c) with appropriate changes in citations, limits surface coal mining and reclamation operations to approved and bonded areas shown on the permit application map.

No comments were received on this section, and it was adopted as proposed.

SECTION 773.17(b).

Section 773.17(b) incorporates the requirements of previous Sections 786.27(a) and 771.19, with minor editorial changes. The section requires operations to be conducted only as described in the approved application except as otherwise directed in the permit.

Several comments were received to simply require operations to be conducted as described in the permit. The commenters suggested deleting the proposed word "only" and the proposed phrase "application, except to the extent the regulatory authority otherwise directs in the permit." The commenters felt that these changes would eliminate ambiguity, confusion, and unnecessary language.

OSM has not changed this provision which emphasizes that the operation must be conducted in accordance with the approved permit, including permit conditions. OSM is not eliminating the word "only" since the application must be complete and accurate to be approvable. A permit revision must be approved by the regulatory authority if the operator wishes to deviate from the approved application and permit.

Previous Section 786.29(c) is deleted as redundant. Previous Section 786.29(c) allowed the regulatory authority to place special conditions on permits in order to protect the environment in special situations (see *44 FR 15104*, March 13, 1979). Final Section 773.17(b) negates the need for this requirement since it provides for operations to be conducted as described in the application, except as the regulatory authority otherwise directs in the permit. Thus, the regulatory authority has the authority to place special conditions on permits for environmental protection.

SECTION 773.17(c).

Section 773.17(c) implements the basic requirement of Section 515(a) of the Act that all operations must meet all applicable performance standards of the Act, and the requirements of the regulatory program. This incorporates the portion of previous Section 771.19 which is not incorporated in Section 773.11 or 773.17(b). Previous Section 786.29(b) is deleted as redundant. Previous Section 786.29(b) placed affirmative responsibilities on operators to dispose of materials produced by pollution control devices in an environmentally acceptable manner as required by Subchapter K, the regulatory program, and other applicable State or Federal law. Since Section 773.17(c) requires all operations to meet applicable performance standards of the Act and the requirements of the regulatory program, it is not necessary to highlight performance standards for pollution control devices. Also, there is no need to require operations not to violate other State and Federal laws, since those laws already apply.

The section has been adopted as proposed with revisions discussed above to more closely parallel the language of section 515(a) of the Act.

SECTION 773.17(d)(1).

Section 773.17(d) includes the provisions of previous Section 786.27(b) with some changes. Section 773.17(d)(1) requires every permittee to allow the authorized representatives of the Secretary and the regulatory authority to have the right of entry provided for in Sections 842.13 and 840.12. This is the same requirement as in previous Section 786.27(b)(1).

No comments were received on this section, and it was adopted as proposed except for changing the designation of paragraph (d)(i) to (d)(1).

SECTION 773.17(d)(2).

Section 773.17(d)(2) establishes a permit condition that private persons be allowed to accompany a State or Federal inspector when the inspection is in response to a report by that person of an alleged violation.

One commenter supported the proposal that " private inspectors" -- private persons accompanying inspectors -- be allowed only when there is a Federal inspection.

Another commenter stated that a State program is not approvable under Section 503(a) of the Act unless it provides for citizens to be able to accompany the inspector on the mine site when the citizen has requested the inspection and provided information about an alleged violation. The commenter felt that such a provision is mandatory both upon the State program and upon the permittee as a permit condition.

OSM agrees that private persons may accompany representatives of both the Secretary and the State regulatory authority when the inspection is in response to a report of an alleged violation made by a private person. The final rule has been revised accordingly.

SECTION 773.17(e).

Section 773.17(e) includes the conditions previously in Section 786.29(a) Section 773.17(e) requires a permittee to take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit. No comments were received on this section, and OSM has adopted the rule as proposed.

SECTION 773.17(f).

Section 773.17(f) provides the permit condition for existing structures. Previous Section 786.21 which provided criteria and conditions with respect to existing structures has been deleted. Instead, Section 773.17(g), in conjunction

with Section 773.15(c)(6), provides an abbreviated version of the requirements relying on references to the substantive provision at Section 701.11. OSM has included this requirement as a permit condition to ensure that the provisions of Section 701.11(d) are met.

SECTION 773.19 - PERMIT ISSUANCE AND RIGHT OF RENEWAL.

SECTION 773.19(a) - DECISION.

Section 773.19(a) concerns the decision on a permit application. It implements the requirement of Section 514(c) of the Act that, if the application is approved, the permit shall be issued and, if application is disapproved, specific reasons for disapproval must be set forth in the notification. This section was proposed as Section 773.15(a)(3).

One commenter proposed to add to the first sentence the phrase "upon submittal of a performance bond in accordance with Subchapter J."

OSM agrees with this comment, and the phrase has been added to the final rule. In accordance with Section 509(a) of the Act, a permit may not be issued until a performance bond had been submitted under Subchapter J.

SECTION 773.19(b) - NOTIFICATION.

SECTION 773.19(b)(1) and (2).

Section 773.19(b)(1) and (2) include the reporting requirements of previous Section 786.23(e) and (f). The notice provisions, however, have been revised to reduce the paperwork burden on the regulatory authority. Requirements to notify the applicant and the local governmental officials in the local political subdivision have been retained, as required under sections 510(a) and 514(b) of the Act. The final rule also requires notification of persons filing objections (or comments) to the permit application and of parties to an informal conference, since they should have adequate notice of the decision in order to request administrative review of the decision under Section 775.11. The newspaper notification requirements of previous Section 786.23(e) have been deleted as unnecessary since all parties which had expressed interest in the application will be directly notified.

Two commenters noted that proposed Section 773.15(a)(4), which is final Section 773.19(b)(1) and (2), deleted several provisions from the previous regulations, including notice to persons who were parties at the informal conference and newspaper notice of the permit decision.

The commenters believed that if a person had participated in the informal conference, that person should be given notification about the decision, so that he or she may contest it if he or she is aggrieved. The commenters also believed that there may be members of the public who had no objection to the permit as proposed, but who may be distressed by some of the conditions imposed by the regulatory authority and should be notified by a newspaper summary of the decision.

Another commenter stated that the newspaper notice of permit issuance by the regulatory authority should be retained to assure that all parties and interested or affected "non-parties" receive notice.

The term "comments," has been added to the final rule, since it could be difficult to differentiate between comments and objections. This clarifies that anyone who comments on, or sends in objections to, the application should be directly notified. Also, OSM agrees that parties to the informal conference should be notified and has made the appropriate addition. Each of those persons should be notified so they may appeal it if they are aggrieved.

Requiring a summary of a decision to be published in a newspaper would place an unnecessary paperwork burden on the regulatory authority. It is unnecessary to assure that parties receive notice beyond direct notification. Further, the general public will receive newspaper notice with initial submission of the application and therefore will be able to track processing of the permit if they are interested. Double notification is unnecessary, burdensome, and not required under the Act. OSM believes that direct notification to persons who have expressed an interest is more beneficial.

Final Section 773.19(b)(2) contains the provisions of previous Section 786.23(f) requiring notification of local governmental officials in the local political subdivision where the mine will be located within 10 days of issuance of the permit. Some editorial changes have been made in the final rule.

SECTION 773.19(b)(3).

Section 773.19(b)(3) retains the requirement, previously in Section 786.23(e)(1)(ii), to notify OSM, if the regulatory authority is a State, since this information is necessary for OSM to conduct oversight of a State program.

No comments were received on this section, which was proposed as Section 773.15(a)(5). OSM has adopted the proposed rule, with some editorial changes.

SECTION 773.19(c) - PERMIT TERM.

Section 773.19(c) establishes that the term of a permit will be 5 years or less, unless the requirement of Section 778.17, concerning additional time needed to obtain financing, are met. This was the requirement of previous Section 786.25(a).

One commenter stated that the permit term is appropriate. Another commenter stated that a permit term of 5 years or less is needless bureaucratic control over private enterprise and requires an operator to be continually involved in permitting. Another commenter stated that OSM must amend this section to read "each permit," rather that "a permit."

Section 506(b) of the Act requires all permits issued pursuant to the Act to be issued for a term not to exceed 5 years, except under certain conditions. Thus, the final rule in Section 773.19(c) continues to apply the maximum 5-year permit term.

The language has been amended to read "each" rather that "a", in order to meet the intent of the statutory phrase "all permits."

SECTION 773.19(d) - RIGHT OF RENEWAL.

Section 773.19(d) contains provisions establishing rights of renewal under an approved permit application. It includes requirements of previous Sections 786.25 and 788.13(a).

By order of the U.S. District Court for the District of Columbia in In re: Permanent Surface Mining Regulation Litigation, No. 79-1144 (D.D.C.) Slip op. at pp. 35-36 (February 26, 1980) and Slip op. at pp. 57-58 (May 16, 1980), OSM suspended the use of the term "mine plan area" in the regulations. In two separate rulemaking actions on August 4, 1980 *(45 FR 51550)* and April 5, 1983 *(48 FR 14814)* the term "mine plan area" was suspended and then removed from the regulations and alternate areal descriptors were used in its place. The alternate terms were selected in accordance with the requirements of the Act.

In light of the suspension and removal of the term "mine plan area" from the regulations, OSM has reevaluated the requirements of the Act and has determined that a previous interpretation, as described below, was inconsistent with the right of permit renewal; incorrectly required a new permit application approval for each subsequent area to be mined; incorrectly limited the size of the permit area to that area in which surface coal mining operations are conducted during the initial permit term; and was not in accord with Congressional intent.

Section 773.19(d) of the final rule clarifies an ambiguity which existed in the interpretation of the provisions for permit renewal and the length of the permit term in previous Sections 788.13-788.16 and 786.25. Specifically, Section 786.25(a)(2) provided for a maximum permit term of 5 years, unless the applicant requested a longer term and included a showing that the specified longer permit term was needed to obtain financing. However, previous

Section 778.17(b) stated that whenever an applicant proposed to conduct mining activities in excess of 5 years the application must include the information required for an extended permit term under Section 786.25(a)(2). Thus, under a literal interpretation of these sections of the previous rule, an operator was apparently prohibited from proposing to conduct a mining operation in excess of 5 years, unless the financial information requirements of Section 786.25 were met.

Under the final rule, such information on financing is required for a permit to be issued for a term that is in excess of 5 years. However, an operator may propose to mine for greater than 5 years and the approval of the regulatory authority may cover such extended operations, so long as the permit is issued for a fixed term of 5 years or less. These changes are reflected in final Sections 773.19 (c) and (d), and 778.17. Although the previous regulation could have supported life-of-the-mine area permits, OSM did not follow such a practice.

Under these final rules, OSM will distinguish between the duration and scope of the activities covered by the permit application approval and the period the permit will remain in effect. Such a distinction is recognized in the Act. Under Section 509(a) of the Act, it is clear that the permit area may contain lands upon which no surface coal mining operations will be conducted during the initial permit term. That is consistent with the provision allowing incremental bonding. Although the Act contains a temporal limitation on permits, there is no limitation on the size of the permit area, so long as the permit application is accurate and complete. In this context, it should be noted that the provisions in the Act establishing the approval criteria for permits and permit renewals, Sections 510(b) and 506(d)(1), are separate from the provisions establishing the respective permit terms, Section 506 (b) and (d)(3).

Under the previous rules, operators were not issued permits for areas in which surface coal mining operations would not occur during the initial permit term. Since most underground mines, most surface mines in the west, and many surface mines in the east are designed to operate for periods in excess of 5 years, the previous interpretation resulted in these mines being permitted in successive 5-year increments. The total area covered by all of the incremental 5-year permit areas over the entire life of the surface coal mine operations was defined as the "mine plan area;" and although the operator was required to submit some data and information on the "mine plan area" in the permit application, the permit approval did not extend to such areas. Accordingly, the renewal provisions of Section 506(d) of the Act were rendered virtually meaningless.

Under the definition in Section 701(17) of the Act, the "permit area" is to be that "area of land indicated on the approved map submitted by the operator with his application. . . ." Thus, the permit area is to be defined by the operator in his application. The permit application may be approved by the regulatory authority if it is accurate and complete; meets all of the requirements of the Act and the regulatory program; and the regulatory authority makes the necessary findings. However, once the application is approved, the permit can be issued only for a specified term not to exceed 5 years, unless the provisions of Section 506(b) of the Act (implemented under Section 778.17) are met. In such cases, a permit for a longer specified term could be issued.

Under the Act and these rules, a permit area can be larger than the area which will be mined in one (5-year) permit term, providing the application covering the larger area is found to be complete and accurate and meets all other requirements for permit application approval. Under Section 506(d) of the Act, the permit, covering the approved permit area, has a right of renewal upon the expiration of each permit term, provided the standards for permit renewal are met. A new permit application approval is only required if the criteria for renewal are not met, if the renewal application includes a request for a revision of the permit, or if, in accordance with Section 506(d)(2) of the Act, an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit. When a renewal is approved, an operator can continue to mine under the permit during the subsequent term.

Under this rule, the permit term and permit issuance provisions are consistent with the requirements for permit renewal. The regulatory authority and the public are provided an opportunity to review the permittee's history of compliance with the permit, regulatory program, and Act and to ensure that necessary bonding and insurance requirements are updated and made valid for the succeeding term. Thus, the renewal application and required review for permit renewal do not repeat all the technical information requirements and analyses which were incorporated in

the original approval. This is recognized in Section 506(d) of the Act which prescribes the requirements for permit renewal.

Several commenters supported the concept discussed in the preamble to the proposal concerning the right of renewal and the life-of-the-mine permit. They felt these revisions were appropriate and a better interpretation of law.

One commenter thought the proposal provided for the submittal of a general plan for the life of the mine and detailed environmental information with each 5-year renewal application. They felt this would allow the regulatory authority to confirm that the mine is being operated within the general approved framework.

This commenter is not correct in his interpretation. The permit application must contain detailed information for the entire area to be included in that permit application. A permit, with the right of successive renewal, cannot be approved for an area which does not have to complete and accurate application. The initial permit may not be a "general framework" with detailed 5 year plans to follow, but rather must be a complete and accurate description in accord with all permit application requirements for the entire operation as it will affect the entire permit area. If information for some part of the proposed permit area is not complete, then a permit may not be issued for that area.

One commenter believed that one of the purposes of the proposed permitting system was to allow the operator to submit a complete mining plan covering the entire area of the mine. From that standpoint, he believed that it was desirable. The commenter asserted that, logically, the permit should include the entire area to be mined, and there is nothing wrong with having a permittee ask for a renewal, which would presumably be on the basis of continuing to comply with the terms of the original permit. He noted that the Conference Report to the Act says that the "right of successive renewal [is] for areas within the valid permit, with the burden of nonrenewal on objectors to renew or the regulatory authority. Any new areas included in such permit renewal requires meeting full standards applicable to new permits." H. Rept. No. 95-493, 95th Cong., 1st Sess. (1977).

OSM agrees with this commenter that a permit application could cover the entire area of the proposed mine, with the permittee asking for a renewal which would be approved on the basis of continuing to comply with the terms of the original permit.

One commenter state that final Section 773.19(d) must limit permit approval to those lands described under the reclamation plan as being within the subarea for that individual permit; it cannot extend beyond the area reasonably anticipated to be mined during that permit term. The commenter stated that permit renewal applications for land areas beyond the existing permit boundaries, based on the permit term, must be treated as new applications. The commenter stated that the limited intent of permit renewal was to recognize that the permittee might not be able to mine the original area within the stated time and to allow completion of the operation within those limited boundaries via renewal.

Likewise, another commenter suggested that the second sentence of Section 773.19(d) read: "The approved permit shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration. * * *" The commenter argued that the existing permit was limited to boundaries based on the permit term.

OSM agrees with the commenter that a permit renewal application concerning land areas beyond the existing permit boundaries must be treated as a new application and has added clarifying language to show that there is a right of successive renewal only within the "approved boundaries of the existing permit." OSM disagrees, however, that a permit application may only cover those areas which the operator reasonably expects to mine within the initial term of the permit. Nowhere in the Act is the regulatory authority prohibited from approving a permit application covering an area larger than that which operator expects to mine within the initial permit term. In fact, the commenters' suggestions indicate difficulty with the way in which the previous rule was applied. Those operators who accurately determined the area which could be mined within a 5-year term would not qualify for a permit renewal, while those operators who incorrectly estimated or misrepresented the amount of mining they could accomplish within 5-years, would qualify for permit renewal within the stated boundaries if they failed to complete the proposed mining within 5 years.

One commenter believed that the proposal would be a significant revision in the concept of permit term permit area, and permit renewal and alters Congressional intent and the mandates of the Act. The commenter stated that all permit terms are to be for no greater than 5 years, according to Section 506(b) of the Act. In accordance with Section 506(d)(3) of the Act, any permit renewal shall be for a term not to exceed the period of the original permit established by the Act. Thus, the commenter believed the renewal period, as well as the initial permit term, must be for a period of 5 years or less. Also, the commenter noted that the Senate Report 95-128 (95th Cong., 1st Sess., 1977) at page 74 states that "the terms of permits or permit renewals or extensions issued under State programs shall not exceed 5 years." The commenter thought that the exception to the 5-years limitation is available only if the extended term is needed to obtain financing for equipment and the opening of the operation and if the application is full and complete for the specified length of the proposed term. Another commenter believed that the intent of the 5-year period was to put operators on a "short leash" which is why there is an exception where operators could not obtain financing. The commenter believed that Congress adopted the exception so that operators would not be denied financing due to uncertainty about whether a second 5-year permit would be approved. If Congress had adopted the approach of the proposed regulation, the commenter believed that the exception would not have been necessary.

As stated earlier, the rules related to permit term, permit area, and permit renewal are consistent with Congressional intent and the mandates of the Act. The permit or renewal term, as stated in final Section 773.19(b) must be 5 years or less, unless the requirements of final Section 778.17 are met for the initial permit term. OSM agrees that the exception in Section 778.17 to the 5-year initial permit term is for mines which need the extra time to obtain financing. However, the exception is not necessarily related to, and does not preclude, those operations which plan ahead and incorporate a larger area in the permit application than will be mined during the first 5 years.

Other commenters opposed to the proposal stated that the proposed regulations weaken the existing process by allowing an operator to include a 20-to-40-year mining operation within a single permit and continue that operation through permit renewals. They believe that this will make it much more difficult for the regulatory authority to require adaptation to changing circumstances and new mining technology. Although as one commenter pointed out, a permit covering a 20-to-40-year mining area is not disallowed by the Act.

OSM agrees with the commenter who noted that approval of a permit application covering a 20-to-40-year mining area is not disallowed by the Act. OSM disagrees that these regulations weaken the protection afforded the environment. No permit may be issued unless the permit application is complete and accurate and the other findings of Section 510 of the Act are made. Moreover, the operator is still required to obtain a permit revision under final Section 774.13 for any changes from the approved application and permit; obtain a permit renewal under final Section 774.15 at the end of each term; and be subject to regulatory authority review and modification of the permit during its term under final Section 774.11. Thus, any permit application approved under the final rule will be subject to periodic public and regulatory authority review and will be subject to orders by the regulation authority to revise or modify the permit to ensure compliance with the Act and the regulatory program.

One commenter stated that there are two different concepts -- the area covered by a permit and the area comprising the life-of-the-mine operation, and the first is a subarea of the second. The commenter stated that the two cannot be the same unless (1) the entire operation is capable of being mined in 5 years, or (2) the permit covers the last years of the life of the operation. The commenter believed that each permit application should contain only those areas which the operator reasonably expects to mine within the initial term of the permit. He along with another commenter believed that the Act is clear in its intent that each subarea be individually permitted, based on the amount of activity that can be conducted within that area during the permit term, (i.e. 5 years) in accordance with Sections 507(b)(8) and 508(a)(1) of the Act. The commenter believed that a permit cannot properly contain within its boundaries more area than can be mined and reclaimed during the permit term.

The commenter stated that the legislative history supports this reading as well and that Senate Report 95-128 (95th Cong., 1st Sess., 1977) at page 75 describes the application requirements for a permit as including "a plan for the entire mining operation for the life of mine including identification of the subareas anticipated to be included on a permit by permit basis, their sequence.

* * *"

OSM disagrees with the commenter's view of the relation between the term of the permit and the area to be mined for several reasons. A permit is required for reclamation activities until final bond release. Since bond release cannot occur until after the 5- or 10-year period for establishing revegetation, no permit could have only one 5-year term without renewal. Such a situation could only exist if the mine was in a region of the country with greater than 26 inches annual average precipitation and the entire area could be mined and reclaimed in one day, thus beginning the 5-year revegetation responsibility period. Such an interpretation could not have been intended by Congress. The legislative history, as well as the language of Sections 507(b)(8) and 508 (a)(1) and (a)(11) of the Act, are fully consistent with the interpretation included here. The information provided under these sections will help the regulatory authority establish the number of permit renewals that may be requested by the operator and any additional areas where the operator may submit additional new permit applications to extend the existing operation. OSM does not assume that every operator will want to submit a permit application which covers a larger area than that anticipated to be mined in 5 years. For those operators who choose to submit a series of permit applications, Congress intended the regulatory authority to obtain information concerning the size, sequence, and timing of subareas for which it is anticipated that individual permits will be sought. Sections 507(b)(8) and 508(a)(1) of the Act are thus planning tools. They will also provide the regulatory authority information with which to make the cumulative hydrologic impact assessment (CHIA) required under Section 507(b)(11) of the Act to include an evaluation of all "anticipated mining," as well as the proposed operation. Such an interpretation is in accord with Section 701(17) of the Act which allows the operator to determine the size of the permit area covered in the application. Further, Sections 507(b)(8) and 508 (a)(1) and (a)(11) do not require the permit area to be limited to the area to be mined within the initial term. Additionally, as mentioned earlier, Section 509(a) of the Act recognizes that the area upon which the operator will conduct surface coal mining and reclamation operations during the initial term of the permit may be less than the entire permit area.

One commenter noted that under the proposed rule, upon the expiration of the nominal 5-year permit term, the operator simply gets a renewal of his existing permit rather than a new permit. If the operator is forced to get a new permit as the commenter believed the Act intended and the previous regulations required, he must make comprehensive showings of his ability to meet the Act's requirements, and the regulatory authority must allow broad citizen participation. Another commenter believed that an operator would have to show that his plans for the next 5 years were in compliance with the Act and that the operation had been in compliance with the Act up to that point. However, in obtaining a permit renewal, the commenter believed that a permittee does not need to make a showing that he can comply with the various permitting requirements of the Act, since in theory, he has already made the showing when he obtained his first permit. The commenter believed that a permit would be issued and with that issuance all citizen participation in the permitting process for the life of the operation would end and that the 5-year permit term was put in the Act to ensure periodic review based on operational experience, a review in which citizens could participate.

OSM agrees with the commenter that a renewal does not require the renewal applicant to make a showing that he can comply with all the various permitting requirements of the Act since he made that showing when he obtained his first permit. In order to grant a permit renewal, however, the regulatory authority must determine that the terms and conditions of the permit are being met, that the operation is in compliance with the Act and regulatory program, and that renewal will not substantially jeopardize the operator's ability to meet his continuing responsibility on the existing permit area. See Section 506(d) of the Act and Section 774.15(c). Any time a permit revision is required by the operator or by the regulatory authority, the permittee must show that the revision complies with all requirements of the Act, as required by final Section 774.13(c). The commenter's interpretation that the Act requires an operator to apply for a new permit at the end of the 5-year permit term is mistaken. The Act clearly states that existing permits have the right of successive renewal within their boundaries.

The commenters's assertion that with permit issuance all citizen participation would end is incorrect. Renewals of a permit are subject to the full public notification and participation requirements of Sections 773.13 and 774.15(b)(3). Significant revisions to a permit are subject to public notification and participation as required by final Section 774.13(c). Citizens have an opportunity to comment on these applications. Their comments can be based on operational experience.

A commenter believed that the practical impact of the proposal is even worse than the legal impact. He contended that since every existing coal mine in the United States must be repermitted once primacy is obtained, all existing mines could receive their new permit, and permitting would then cease in the United States, except for new mines.

OSM disagrees with the comment that once existing mines have their new permits, permitting would then cease except for new mines. First of all, many operators may elect to have a series of permits. Because the permit application must be complete and accurate for the entire permit area prior to approval, it could be more practical for an operator to collect and submit the information for separate permit applications as subareas are ready to be mined, rather than attempt to satisfy the permitting requirements for the larger area. Secondly, operators would be required to apply for and obtain permit renewals for continued mining beyond the first permit term as well as permit revisions for changes in the mining or reclamation plan. As stated earlier, citizen participation would occur during review of applications for renewals and revisions.

One commenter strongly supported life-of-mine planning which he felt was envisioned in Section 508 of the Act, but limited with permits. The commenter believed that in the conference committee report there was never any dispute that the mining and reclamation plan was to be for the life of the mine, but that the permit was for 5 years and the operator had to come back in and repermit the operation. The commenter believed the conference committee transcript showed quite clearly the way the permitting system and the mining and reclamation plan were to work. He believed the theory is that there is life-of-mine planning (e.g., hydrology and probable hydrologic consequences) with permission to mine for only the first 5 years, and that for the second 5 year interval, the operator would be evaluated on the basis of operational data and development of the mine and would need to obtain a new permit. This scheme would provide citizens a chance to make their input on whether the second 5-year permit term or the third or fourth needs any significant revisions.

OSM agrees that the analysis of hydrologic impacts under the CHIA extends to the anticipated life of the mine. However, other than in the analysis of cumulative hydrologic impacts that may occur, the Act does not require the permit to fully cover the life of the mine. Rather, the operator is to define the permit area in the application and thus the extent of permitting information required. In the original regulations, the term "mine plan area" was used to implement a life-of-the-mine concept. As stated earlier, that definition and the use of the term was enjoined by the U.S. District Court. These final regulations are in accord with this ruling. The commenter's suggestion that the permitting system and the mining and reclamation plan cover the life of the mine, while at the same time requiring the operator to obtain a new permit at the end of each 5-year interval must be rejected. Section 506(d)(1) of the Act clearly provides that a valid permit issued under the Act carries a right of successive renewal.

Requiring the applicant to cover the life of the mine in the permit application and then imposing a requirement to obtain a new permit at the end of each term is inconsistent with this right of renewal. Moreover, the permit renewal process provided in Section 774.15 provides for full public participation in the permit renewal process. Under these final rules, citizens will have an opportunity to make their comments on whether a second 5-year permit term or the third or the fourth require any significant revisions.

One commenter believed that the hydrologic information should cover the life of the mining operations (probable hydrologic consequences (PHC) and cumulative hydrologic impact assessment (CHIA)). Another commenter was concerned that the hydrologic protection rules would be based on the 40-year or life-of-mine permitting system. Yet, the commenter believed that the proposed regulations do not deal with critical questions such as whether the hydrologic protection determination is to be made for the life of the mine, which the commenter believed it should, or only the first 5-year permit term.

The commenter believed that the permitting system is intertwined with substantive provisions and that if the life-of-mine permit concept was struck down in the courts, there would be confusion as to the meaning of the substantive hydrology provisions.

Requirements for hydrology assessments will remain the same. The determination of the probable hydrologic consequences of the operation will continue to be keyed to the permit area and adjacent area. The cumulative hydrologic impact assessment will be a comprehensive study of the effects of all anticipated mining including the entire life of the applicant's proposed mine, existing operations, operations for which an application had been filed, and certain other possible operations. A more complete discussion of the provisions related to hydrologic information and determinations is found in the preamble to the revised hydrology rules.

One commenter believed it is going to be more difficult for the public to participate in the permitting process if the operator only has to apply for a renewal at the end of the first 5-year period and does not have to file any new plans or maps.

OSM disagrees with the commenter that public participation is affected by whether the operator files new plans and maps, it the current plans and maps are appropriate. Prior to approval an application must be complete and accurate. There is no basis for a requirement to require new plans or maps routinely at the end of a permit term. The application will be subject to full review by the public prior to approval as well as public participation at the time of any renewal. If the operator chooses to change his operation, a permit revision must be processed in accordance with Section 774.13. Any significant revision will also be subject to full public participation. Furthermore, requiring a renewal applicant to resubmit duplicative information would not be in compliance with the Paperwork Reduction Act of 1980, *44 U.S.C. 3500* et seq.

SECTION 773.19(e) - INITIATION OF OPERATIONS.

Final Section 773.19(e) includes the requirements for initiation of operations contained in previous Section 786.25(b). The general rule is that the permittee must begin the surface coal mining operation within 3 years of permit issuance or the permit will terminate. Certain exceptions are provided as they were in the previous rule.

One commenter suggested that the permit term begin at the start of coal mining because construction time should not subtract from the permit term.

This comment was not accepted. Surface coal mining and reclamation operations include support activities as well as the actual coal mining. Thus, such activities must be covered by the permit. Consistent with Section 506(b) of the Act, these rules provide for permits to be issued for a fixed term. Thus, the term of the permit begins upon issuance. Further, Section 506(c) of the Act specifies that the 3-year period, a established in Section 773.19(e), begins with issuance of a permit although there can be reasonable extensions of time due to litigation, substantial economic loss, or conditions beyond the control, and without the fault or negligence of the permittee. For these reasons, OSM is not changing the language of this section.

C. PART 774 -- REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

SECTION 774.1 - SCOPE AND PURPOSE.

Section 774.1 combines and simplifies previous Section 788.1 through Section 788.3 and deals with the scope and purpose of the revision; renewal; and transfer, assignment or sale of permit rights. This section was proposed as part of Section 773.1, but was separated out when it was decided to create a separate Part 774 from proposed Part 773.

SECTION 774.10 - INFORMATION COLLECTION.

This section codifies approvals by the office of Management and Budget. This section was proposed as part of Section 773.10 but was separated when a new part was made. No comments were received on this section.

SECTION 774.11 - REGULATORY AUTHORITY REVIEW OF PERMITS.

SECTION 774.11(a).

Section 774.11(a) is concerned with the review of outstanding permits by the regulatory authority. It deals with midterm permit review and is the same as previous Section 788.11(a), except that the citations to the variances for mountaintop removal and delay in contemporaneous reclamation requirements in combined surface and underground mining operations are referenced to the appropriate permit section and placed in Section 774.11(a)(2).

Section 774.11(a)(1) contains the same provisions as previous Section 788.11(a)(2) concerning review of permits of longer than 5 years. Section 774.11(a)(2) combines and simplifies the requirements of previous Sections 788.11(a)(1), 785.14(d), and 785.18(e). For example, requiring permit review within 3 years from the date of issuance is simpler than the requirement of previous Section 785.16(4)(d) for review within the 6 month preceding the third year from the date of permit issuance and provides review within the same period.

Section 774.11(a)(3) combines requirements from previous Sections 788.11(a)(1) and 785.16(e) and modifies the time for review of two special types of operations in keeping with changes made in other rulemakings. The new rule governing experimental practices requires a permit review at a minimum every 2 ½ years. *48 FR 9478* (March 4, 1983). A similar rule has been issued with regard to variances from the requirement to restore the approximate original contour under Section 785.16.

One commenter concurred with the proposed changes to Section 774.11(a)(1), which was proposed Section 773.23(a)(1). However, the commenter stated that Section 774.11(a)(2), which was proposed Section 773.23(a)(2), combined review of the different variances and then allows such review to be waived if the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit. The commenter noted that there is no provision for a waiver of the review of variances allowing delays in contemporaneous reclamation for combined surface and underground mining.

The commenter also believed that the regulations must require that permits with variances granted under Sections 780.23, 785.14, 785.16, or 785.18 be reviewed before renewal of such permits. He felt that this is essential and in keeping with the heightened scrutiny that Congress intended for such operations. Absent a prerenewal review, the variance could in effect proceed for an entire permit term unreviewed (i.e., from the first permit midterm review until midterm review of the renewal). He stated that the prerenewal review is mandated by Section 506(d)(1)(A) of the Act and that the affirmative demonstration by the permittee must properly be in writing and must demonstrate compliance not only with the terms of the permit but also the Act, this chapter, and the State program.

Other commenters stated that since paragraph (a)(3) refers to experimental practices, it should be coordinated with changes in final Section 785.13.

OSM agrees with the comment that midterm permit review of variances allowing delays in contemporaneous reclamation for combined surface and underground mining may not be waived and changed the language accordingly so it would comply with Section 515(b)(16)(C) of the Act.

The commenter's concern regarding another review of permits incorporating other variances before renewal is addressed in Section 774.15(c)(1), which was proposed Section 773.27(c)(1), and which in conformance with Section 506(d)(1)(A) of the Act, requires the regulatory authority to deny a renewal if it finds that the terms of the permit, including any variances, are not being met. However, the commenter's interpretation that Section 506(d)(1)(A) of the Act requires an affirmative demonstration by the permittee in writing, specifying compliance with the Act, rules, and State program is not correct. The regulatory authority may require such an affirmative demonstration under Section 506(d)(1)(E) of the Act, but Section 506(d)(1) places the responsibility on the regulatory authority of determine if the terms of the permit and the environmental protection standards of the Act and the regulatory program have not been met.

Section 774.11(a)(3) has been coordinated with changes in Section 785.13(g) regarding permits for experimental practices and requires a review every 2 ½ years or as required in the permit, whichever is more frequent. See *48 FR 9478* (March 4, 1983).

SECTION 774.11(b).

Section 774.11(b) provides the regulatory authority with the authority to require reasonable revision of a permit to ensure compliance with the Act and regulatory program. This section is derived from previous Section 788.11(b).

One commenter believed that because this paragraph was contained in the proposed section entitled "Regulatory Authority Review and Modifications of Permits," which refers to the midterm review, these revisions ordered by the regulatory authority could only be associated with the midterm review. In order for it to be clear that the regulatory authority may require revision of a permit at any time and that the procedures of Section 774.13, which was proposed as Section 773.25, apply to all permit revisions, whether initiated by the permittee or the regulatory authority, the commenter suggested that Section 774.13 should expressly provide for revisions required by the regulatory authority.

OSM agrees with the commenter that the procedures for approving a revision in Section 774.13 should apply both to those required by the regulatory authority in Section 774.11(b) and to those which the applicant proposes under Section 774.13. Thus, OSM has added language in final Section 774.11(b) which refers the applicant to the requirements in Section 774.13 for approval of a permit revision. OSM also agrees that clarification is needed that the regulatory authority may require a permit revision at any time and not only after midterm review. OSM has added the phrase "or at any time" to make this clear. Also, OSM has deleted the term "modification" as unnecessary. Additionally, the reference in the proposed rules to Section 780.23, land use variances, has been deleted in the final rules since its inclusion was a mistake.

SECTION 774.11(c).

Section 774.11(c) consolidates the paragraphs of previous Section 788.11 (c) and (d) and requires that an order for revision of a permit must be based on written findings and be subject to administrative and judicial review, and that a copy of the order be sent to the permittee. The term "modification" was omitted from both Paragraphs (b) and (c) for consistency since Section 774.13 utilizes the term "permit revision." No comments were received on this section and, other than editorial changes, it has been adopted as proposed.

SECTION 774.11(d).

Section 774.11(d) provides that a permit may be suspended or revoked in accordance with the enforcement provisions of Subchapter L. This contains the same provision as previous Section 786.25(c) except that modifications have been deleted for consistency. No comments were received on this subsection and it has been adopted as proposed.

SECTION 774.13 - PERMIT REVISIONS.

Section 774.13, which proposed as Section 773.25, contains requirements for permit revisions and includes material from previous Section 788.12. The final rule allows the permittee to apply for both significant and insignificant permit revisions, but also requires in Paragraph (b) that the regulatory authority set guidelines establishing the scale or extent of "significant revisions". Significant revisions are required to meet all the permit application requirements for those parts of the permit which would be revised and all processing provisions including notice, public participation, certain notice of decision requirements, and proof of publication requirements for initial permit issuance.

The final rule changes the concept of the previous rule which required permit revisions only for "significant departures" from the original permit. It was not the intent of the previous rule to allow the operator to violate the terms of the existing permit so long as the departure was not "significant." At least one interpretation would have allowed such departures. Under these final rules, the permittee is required to operate in accordance with his or her

permit, including all revisions which have been approved by the regulatory authority. Nonsignificant revisions, however, are subject only to the review procedures established under the State or Federal program.

Previous Section 788.12(a)(2) has been moved to final Section 774.11(b). Previous Section 788.12(a)(3) has been deleted as an unnecessary requirement, since revisions in the operator's bonding and insurance would be handled as would any other permit revision. Such changes are also regulated by the bonding rules in Subchapter J. Previous Section 788.12(a)(4) has also been deleted as unnecessary since Sections 774.11(b) and 774.13 (a) and (b) cover revisions "as otherwise required under the regulatory program."

Two commenters wanted Section 774.13 (proposed Section 773.25) to apply to revisions required by the regulatory authority. Another commenter believed that cancellation and replacement of a bond is "significant" and should occur only in a "noticed" revision, as cancellation of bond coverage can signal problems in an operation and threaten reclamation.

The concern that Section 774.13 should include revisions required by the regulatory authority is covered by the cross-reference in Section 774.11(b). Further discussion of this issue is included in the preamble to Section 774.11(b), above.

OSM disagrees with the commenter's contention that bond cancellation is necessarily a signal that reclamation is threatened and that a permit revision is necessary. There are a variety of reasons why a bond company might cancel a bond, and they may have nothing to do with the surface mining operation itself. Such changes are appropriately handled under the bonding regulation of Subchapter J, and need only be processed as a permit revision if they result in a change in the permit.

SECTION 774.13(a) - GENERAL.

Section 774.13(a) states the basic rule that a permittee may apply for a revision to a permit at any time during the term of the permit. No comments were received on this paragraph, and the final rule is the same as the proposed rule.

SECTION 774.13(b) - APPLICATION REQUIREMENTS AND PROCEDURES.

SECTION 774.13(b)(1).

Section 774.13(b)(1) requires the regulatory authority to establish a time period for review and approval or disapproval of permit revisions. The required time period could vary depending on the scale or extent of the revision. The final rule closely follows the requirements of Section 511 of the Act and provides flexibility to the regulatory authority to establish time periods suitable to operation of the individual State program. Section 774.13(b) revises and replaces the requirements of previous Sections 788.12(c) and Section 771.21(b)(3).

One commenter proposed to delete the requirement that the regulatory authority set a time period to act on revisions because it only forces time constraints on the regulatory authority.

OSM rejected this comment because Section 511(a)(2) of the Act requires the regulatory authority to set such a time limit.

OSM also renumbered this paragraph as Section 774.13(b)(1) as part of the general reorganization of the permit rules, instead of Section 773.25(b)(i) as in the proposal.

SECTION 774.13(b)(2).

Section 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply.

Section 774.13(b)(2) revises and replaces requirements of previous Section 788.12(b) to follow the requirements of Section 511 of the Act and provides flexibility to the regulatory authority to establish guidelines suitable to the operation of individual State programs.

One commenter pointed out that using the terms "significant" and "insignificant" revisions is a more realistic and workable approach to everyday problems associated with mining operations. Another commenter stated that only significant changes to a permit should be incorporated into the permit and administrative record; insignificant changes should only need to be documented to the regulatory authority.

One commenter noted that Section 511 of the Act requires alterations in the reclamation plan to be subject to notice and hearing. He also believed that alterations to legal, financial, and compliance information should trigger public notice and hearing requirements and also that OSM should set minimum standards for significant revisions.

Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to that document. The permit and all public copies of it should reflect all revisions approved by the regulatory authority so that all interested persons, including inspectors, the operator, and the public, will have an accurate copy of the permit. The permit is the document which authorizes the operator to mine and must be accurate. Section 511(a)(2) of the Act requires all "significant alterations" to the reclamation plan to be subject to the notice and hearing requirements of the Act. Paragraph (b)(2) of the rule implements this provision. The regulatory authority must set the guidelines as to what requirements will apply to nonsignificant alterations to the reclamation plan or permit.

The guidelines must also describe what changes to the legal, financial, compliance, or other permit information will constitute a significant revision.

This paragraph was redesignated from proposed Section 773.25(b)(ii) to final Section 774.13(b)(2).

SECTION 774.13(c) - CRITERIA FOR APPROVAL.

Section 774.13(c) is a new section establishing minimum criteria for approval of permit revisions. The previous rules included criteria for permit approval or denial in previous Sections 786.19, 786.21, and 786.23. These requirements sometimes did not make sense when applied to permit revisions since they applied all the required findings for new permits to each permit revision. Section 511(a)(2) of the Act does not require all the findings for issuance of a new permit to be made for each permit revision, unless the revision would include an extension to the permit area other than an incidental boundary revision. Rather, the required findings and criteria for approval may be tailored to the scope of the proposed revision, provided that all requirements of the Act and the regulatory program are met. The final rule reflects this and provides the regulatory authority the flexibility to make only those findings necessitated by the application for a revision.

One commenter agreed that only "significant" revisions need written findings but believed that the Act contradicts this. The commenter proposed that "revisions" be defined as "significant alterations."

The concern that revisions be changed to "significant alterations" is discussed above in reference to Section 773.15(c). As discussed more fully above, Section 511(a) of the Act requires the regulatory authority to set guidelines as to which permit application standards and procedures will apply to nonsignificant and significant revisions. Those standards and procedures include the findings made prior to approval, except that the regulatory authority may not approve any revision without first finding that reclamation can be accomplished and that the revision complies with the Act and the regulatory program. The guidelines established by the regulatory authority should be designed so that the information required in a revision application corresponds to the findings which must be made by the regulatory authority.

SECTION 774.13(d) - REQUEST TO CHANGE PERMIT BOUNDARY.

Previous Section 788.12(d), which stated that any extensions to the permit area, other than incidental boundary revisions, must be covered by an application for a new permit, has been transferred to final Section 774.13(d).

One commenter suggested proposed Section 774.13(d) be modified to require revisions to be made in accordance with provisions for application for a new permit, rather than to require a new complete permit application to revise a permit.

Another commenter expressed concern that to the extent that the initial permit area is smaller, the operator would need additional permits to expand and would have to file additional permit applications.

The first comment is rejected because Section 511(a)(3) of the Act requires a new permit to change the permit boundaries, other than incidental boundary revisions. However, OSM decided to revise the title to Section 774.13(d) to clarify that this change is handled with a new permit application.

OSM agrees with the second commenter that to the extent an initial permit area is smaller, the operator would need to file additional permit applications in order to expend the permit area.

SECTION 774.15 - PERMIT RENEWALS.

Section 774.15, which was proposed Section 773.27, provides requirements for permit renewals and replaces previous Sections 788.13, 788.14, 788.15, and 788.16. Section 774.15 contains requirements for filing, processing, and approving or denying applications for renewal of a permit.

The requirements of this section are intended to complement the rules for notice of decisions on permits and for permit term of Section 773.19, and the provisions for permit revisions of Section 774.13.

SECTION 774.15(a) - GENERAL.

Section 774.15(a) provides the general right of permit renewal contained in previous Section 788.13 (a) and (b). The regulatory language, however, has been revised and streamlined to reduce unnecessary verbiage.

One commenter noted that the right of renewal will do much to eliminate the current uncertainty of applicants. He believed that the permittee has had no assurance of renewal even if he was complying with the Act and regulations.

Two commenters suggested that Paragraph (a) read ". . . within the approved boundaries of the existing permit, upon expiration of the term of the permit." One commenter suggested that language be added after that sentence providing that where the permittee wishes to extend the area covered by his permit, he must apply for another permit, except in the case of incidental boundary revisions, in accordance with Section 511 of the Act.

OSM disagrees with the comment that current permittees had no assurance of renewal under the previous rules. Previous Section 788.13(a) continued the same right of renewal within approved boundaries as final Section 774.15(a). OSM agrees with the commenter's suggestion to add the phrase "of the existing permit" to clarify the term "approved boundaries." As indicated in final Section 773.19(d), the approved boundaries of the existing permit are those lands that are designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. However, OSM decided not to add a sentence concerning extension of the permit area because that would duplicate requirements covered by Sections 774.15(b)(4) and 774.13(d). Further discussion of the provisions for permit renewal is contained above in relation to Section 773.19(d).

SECTION 774.15(b) - APPLICATION REQUIREMENTS AND PROCEDURES.

Section 774.15(b) provides requirements for permit renewal applications and processing and generally parallels the provisions of previous Sections 788.14 and 771.21.

SECTION 774.15(b)(1).

Section 774.15(b)(1) replaces previous Section 771.21(b)(2), with minor editorial changes, and implements Section 506(d)(2) of the Act. No comments were received on this section, which was proposed Section 773.27(b)(1), and it has been adopted as proposed.

SECTION 774.15(b)(2).

Section 774.15(b)(2) covers the form and content of an application for a permit renewal and replaces previous Section 788.14(a) (1) and (3). Section 774.15(b)(2)(i) requires the name and address of the permittee and the permit number, but recognizes that some States do not require permit numbers and allows the use of other identifiers in place of a permit number. Section 774.15(b)(2)(ii) requires information showing that insurance requirements will be met. The final rule includes additional requirements for applications for renewals, not explicitly stated, but required under the previous rule. The first is contained in Section 774.15(b)(2)(iii) and requires evidence of bond coverage. The need for this information was implied in previous Section 788.16(a)(4) and section 506(d)(1)(D) of the Act. Section 774.15(b)(2)(iv) requires proof of newspaper publication of the advertisement of the application. Section 774.15(b)(2)(v) requires the application to include such additional revised or updated information as determined by the regulatory authority. The need for such information was implied in previous Section 788.16(a)(5) and section 506(d)(1)(E) of the Act.

One commenter noted that previous Section 788.14(b)(4) should be reinstated to require the filing of additional bond when necessary. Another commenter believed that the application for renewal should include a description of any changes since the existing permit or renewal, in order to alert the agency and public.

One commenter suggested deletion of the requirement for proof of publication in Section 774.15(b)(2)(iv), which was proposed as Section 773.27(b)(2)(iv), because it is impractical to submit such proof with a renewal application since the application must be publicly available during advertisement.

Another commenter proposed to delete the proposed paragraph referencing Section 773.13 which implied notice need not be filed until the permit application is judged administratively complete, but noted that the regulatory language suggests notice must accompany the application for renewal and therefore notice must be published prior to submittal of the application. The commenter urged that this confusion be eliminated.

One commenter noted that allowing the regulatory authority to require additional revised or updated information in Section 774.15(b)(2), which was proposed at Section 773.27(b)(2)(v), imposes no limit on the regulatory authority's power.

OSM rejected the comment to reinstate previous Section 788.14(b)(4) since Section 774.15(b)(1)(v) covers the requirement to file an additional bond when necessary. This is a permit condition, not an application requirement.

OSM has rejected the comment to require in the renewal application a description of any proposed changes. The mechanism for obtaining approval of proposed changes is Section 774.13, "Permit Revisions," and Section 774.15(b)(4) references that section. If the permittee requests revisions to the permit at the renewal stage, the burden of proof would be on the permittee for any portions of the permit being revised and on any opponents of renewal for the sections of the permit being renewed and not revised.

OSM agrees with the commenters that Section 774.15(b)(2)(iv), which was proposed as Section 773.27(b)(2)(iv), should be clarified. Thus, OSM has changed the language in this section to be consistent with changes made in Section 773.13(a). The applicant must only submit a copy of the proposed newspaper notice with the application and proof of publication in accordance with Section 778.21.

OSM has rejected the comment concerning the absence of limits on the power of the regulatory authority in Section 774.15(b)(2)(v). The regulation implements section 506(d)(1)(E) of the Act, and OSM considers it

inappropriate to place limits on the regulatory authority in this situation. The regulatory authority should specify requirements for revised or updated information as an application requirement if it is to make a finding on any such requirement later in accordance with section 506(d)(1)(E) of the Act.

SECTION 774.15(b)(3).

Section 774.15(b)(3) replaces previous Section 788.17(b)(1) and provides that permit renewals will be subject to the full public notification and participation requirements of the regulations for permit approval.

One commenter noted that the application which is subject to public notice and comment must be complete. Another commenter expressed concern that if the renewal period differs from that in the original permit, it should be clearly spelled out in the applicable documents that are available to the public, and the public should have an opportunity to review them.

The subject of "completeness" and public notice is discussed above in reference to the definitions in Section 701.5 for the terms "administratively complete application" and "complete and accurate permit application." The renewal application must be administratively complete before public notice is given and the process of reviewing the application begin. Section 774.15(b)(3), as well as final Sections 773.13 and 773.15, provides an opportunity for public review of applications for renewals consistent with the public review of new applications.

Section 774.15(d), discussed below, specifies that the term of a renewal may not exceed the term of the original permit. Any difference in the renewal term from the length of the original term would be noted by the regulatory authority.

SECTION 774.15(b)(4).

Section 774.15(b)(4) is a new provision that states that any permit revisions that may be included with the application for renewal are subject to the requirements for approval of permit revisions contained in Section 774.13. Previous Section 788.14(b)(2), which required proposals to extend the boundaries of the operation to be treated as a new permit application, is covered by Sections 774.15(a) and 774.13(d).

No comments were received on Section 774.15(b)(4), which was proposed Section 773.27(b)(4), but OSM decided to clarify that these revisions must be identified in the renewal application. Similar issues were discussed under Section 774.15(b)(2), above.

SECTION 774.15 (c), (d), (e), and (f).

Section 774.15 (c), (d), (e), and (f) include, with some editorial revision, the requirements of previous Sections 778.16 (a) and (b), 788.14(b)(3), 788.15, 788.16(c), and 788.16(d), respectively.

SECTION 774.15(c) - APPROVAL PROCESS.

Section 774.15(c) provides the criteria for approval of permit renewals and the associated burden of proof.

SECTION 774.15(c)(1) - CRITERIA FOR APPROVAL.

Section 774.15(c)(1) provides that a complete and accurate application for renewal of a permit shall be approved unless the regulatory authority finds that one or more of the conditions in Paragraphs (c)(1)(i-vi) are not satisfied. Paragraph (c)(1)(i) refers to the terms and conditions of the existing permit being satisfactorily met, which is the previous Section 788.16(a)(1). Section 774.15(c)(1)(ii) provides for renewal approval unless present operations are not in compliance with the environmental protection standards of the Act and regulatory program, which is previous Section 788.16(a)(2). Section 774.15(c)(1)(iii) provides for approval unless renewal substantially jeopardizes compliance with the Act and regulatory program on existing permit areas, which is previous Section 788.16(a)(3). Section 774.15(c)(1)(iv) provides for approval of the permit renewal application unless the operator has not provided

evidence of having liability insurance as required in revised final 30 CFR 800.60. This a new requirement added in conformance with final Section 778.18.

Section 774.15(c)(1)(v) provides for approval of the renewal application unless the operator has not provided evidence that the performance bond will continue to cover the operation, which is previous Section 788.16(a)(4). Section 774.15(c)(1)(vi) provides for approval of the renewal application unless the operator has not provided any additional revised or updated information required by the regulatory authority, which is previous Section 788.16(a)(5).

One commenter in responding to Section 774.15(c)(1)(i), which was proposed at Section 773.27(c)(1)(i), stated that the operation's compliance must be measured against the regulations of the Secretary, which are promulgated pursuant to the Act and bind the State and operator.

OSM rejects this comment. The rule follows the language of Section 506(d)(1)(A) of the Act exactly. Since the permit must be in compliance with the regulations and Act to be approved by the regulatory authority, there is no need for such a provision. Also, compliance with the performance standards of the regulatory program is a condition of the permit itself.

Several States had requested, prior to publication of the proposed rule, some guidance on the purpose and basis of the requirement appearing at final Section 774.15(c)(1)(iii), which was proposed at Section 773.27(c)(1)(iii). The provision is required by Section 506(d)(1)(C) of the Act and responds to Congressional concern that a permit renewal not jeopardize the operator's continuing responsibility to satisfy any remaining reclamation responsibility (H. Rept. 94-1445, 94th Cong., 2d Sess., pp. 44-45; H.R. Rept. 95-45, 94th Cong., 1st Sess., p. 89; H. Rept. 93-1072, 93d Cong., 2d Sess., p. 82). The emphasis of Congress in inserting such language into Section 506(d)(1) of the Act was not to require the regulatory authority to analyze the solvency of the company or its ability to continue mining but rather its ability to meet its reclamation responsibility. In this context, Congress did not intend the criteria for renewal to be more stringent than the criteria to issue a permit initially, since Section 506(d)(1) of the Act requires the burden of proof to be on the opponents of renewal. Thus, a State, according to this rule, must find that the requested renewal would not jeopardize the operator's ability to conduct reclamation within the existing permit area.

Another commenter, in responding to Section 774.15(c)(1)(vi), which was proposed at Section 773.27(c)(1)(vi), asserted that each renewal application should include a showing that all performance standards can be met for the next 5 years. Another commenter stated that proposed Section 773.27(c)(1)(vi) should be deleted because it allows the regulatory authority to require additional revised or updated information and imposes no limit on the regulatory authority's power.

OSM rejects the comment concerning Section 774.15(c)(1)(vi) that each renewal application should be required to include a showing that all performance standards can be met for the next 5 years. The regulatory authority may require information relative to such a determination under paragraph (c)(1)(vi) and Section 506(d)(1)(E) of the Act, but the Act does not require such a showing for all renewal applications. Section 506(d)(1) of the Act specifies that the burden of proof is on the opponents of renewal.

OSM also rejects the comment to delete Section 774.15(c)(1)(vi), as this section is a required by section 506(d)(1)(E) of the Act. The regulatory authority is not required to specify additional information to be supplied by the applicant. It is not appropriate for OSM to restrict the regulatory authority's discretion in the area of additional information needed under its program.

No comments were received for paragraphs (c)(1) (ii), (iv) and (v) of final Section 774.25, which were proposed as paragraphs (c)(1) (ii), (iv) and (v) of Section 773.27.

SECTION 774.15(c)(2) - BURDEN OF PROOF.

Section 774.15(c)(2), which states that the burden of proof shall be on the opponents of renewal, was proposed at Section 773.27(c)(2) and included previously as Section 788.16(b). No comments were received on this provision,

and it has been adopted as proposed.

SECTION 774.15(c)(3) - ALLUVIAL VALLEY FLOOR VARIANCE.

Section 774.15(c)(3) contains a special alluvial valley floor variance provision, which is proposed Section 773.27(c)(3) and previous Section 788.14(b)(3). This provision allows an operation which has previously received a variance from the alluvial valley floor standards, in accordance with the proviso in Section 510(b)(5) of the Act, to continue that variance on lands previously identified in a reclamation plan but not yet mined.

One commenter suggested deleting the portion of the application for renewal that addresses "new" land area. The commenter believed that this is a "new and undefined term." The commenter stated that land area previously identified would not be new.

OSM rejected this comment, because the statutory language used in Section 506(d)(2) of the Act refers to "new land areas previously identified in the reclamation plan." The term "new land area" means the area not mined in the present term of the permit. This is not a new term and was used in previous Section 788.14(b)(3). This concept is consistent with the concept of permit term and right of renewal, as discussed above in reference to Section 773.19(a)(1). OSM has made editorial changes in this paragraph.

SECTION 774.15(d) - RENEWAL TERM.

Section 774.15(d), which was proposed Section 773.27(d), provides that any permit renewal shall be for a term not to exceed the period of the original permit established under Section 773.19. This was the requirement of previous Section 788.15.

No comments were received on this section, and it was adopted as proposed.

SECTION 774.15(e) - NOTICE OF DECISION.

Section 774.15(e), which was proposed Section 773.27(e), requires the regulatory authority to send a notice of decision on the renewal application to the applicant, all commenters or objectors, and parties to any informal conference. This contains the same requirements as previous Section 788.16(c).

No comments were received on this section and it was adopted as proposed with the addition of persons who file objections to those to be notified and notification of OSM if OSM is not the regulatory authority. The addition was necessary to conform with the terminology used in Section 773.13(b) and to keep OSM informed of the status of permits.

SECTION 774.15(f) - ADMINISTRATIVE AND JUDICIAL REVIEW.

Section 774.15(f), which was proposed as Section 773.27(f), provides for administrative and judicial review of the decision on the renewal on the same basis as review of initial permit decisions. This section contains the same requirements as previous Section 788.16(d).

No comments were received on this section and it was adopted as proposed.

SECTION 774.17 - TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS.

Section 774.17, which was proposed as Section 773.29, includes revisions of previous Sections 788.17, 788.18, and 788.19 regulating the transfer, assignment, or sale of permit rights. Section 774.17 (a) and (b) are a consolidation of previous Sections 788.17 and 788.18(a), with some editorial revisions.

SECTION 774.17(a) - GENERAL.

Section 774.17(a) provides that no transfer, assignment or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority. This is similar to previous Section 788.17 with some editorial revisions.

No comments were received on this section, and it was adopted as proposed.

SECTION 774.17(b) - APPLICATION REQUIREMENTS.

This section contains the requirements an applicant for approval of a transfer, assignment, or sale of permit rights must meet.

OSM has decided to arrange Paragraph (b) in the order which the applicant will most likely undertake the requirements. Since the applicant is first required to submit an application, OSM renumbered proposed Section 773.29(b)(2) as final Section 774.17(b)(1). Because the applicant must then advertise the filing of the application, OSM has renumbered proposed Section 773.29(b)(3) as final Section 774.17(b)(2). Finally, the applicant is required to submit sufficient performance bond coverage; thus, OSM has renumbered proposed Section 773.29(b)(1) as final Section 774.17(b)(3).

SECTION 774.14(b)(1).

Section 774.17(b)(1) contains the application requirements for the transfer, assignment, or sale of permit rights, which were previously contained in Section 788.18(a)(2). Section 774.17(b)(1)(i) includes the requirements of previous Section 788.18(a)(2)(i) to provide the name and address of the existing permittee. In addition, this paragraph requires the permit number or other identifier, so that the operation can be accurately identified.

Section 774.17(b)(1)(ii) was proposed as Section 773.29(b)(2)(ii) and requires a brief description of the proposed action requiring approval. This will better inform the regulatory authority as to what it is being asked to approve.

Section 774.17(b)(1)(iii) simplifies and consolidates the requirements for submittal of financial, legal, and compliance information contained in previous Sections 788.18(a)(2) (iii) and (iv). The term "applicant" is used to refer to the person proposing to succeed to the permit rights by transfer, assignment, or sale. This is in keeping with the fact that such successor is applying for approval of rights in the permit.

No comments were received for final Section 774.17(b)(1) (i) and (ii), which is adopted is proposed.

One commenter thought that final paragraph (b)(1) should require the name, address, and resident agent of the applicant applying for the transfer as required by previous Section 788.18 (a)(2)(ii). Another commenter stated that final Section 774.17(b)(1)(iii) must clearly provide that all the information in Part 778 be required for the applicant for approval of the transfer, assignment, or sale of permit rights, rather than the existing permittee.

The concerns of both commenters are covered in final Section 774.17(b)(1)(iii), which requires the applicant for approval of the transfer to provide the information required in Part 778, such as name, address, and resident agent of the successor. To ensure that this point is clear, OSM has revised the language in final Section 774.17(b)(1)(iii) to specify that the applicant mentioned is the applicant for approval of the transfer, assignment, or sale of permit rights.
SECTION 774.17(b)(2).

Section 774.17(b)(2) includes the newspaper advertisement requirements of previous Section 788.18(b)(1), except that another identifier may be used in place of the permit number if the regulatory authority does not use permit numbers. Editorial changes have also been made.

No comments were received for this section, and it has been adopted as proposed, except for the reordering.

SECTION 774.17(b)(3).

The final rules delete the provisions in previous Section 788.18(a)(1) relating to the options available for obtaining the necessary bond coverage since Section 774.17(b)(3) requires the applicant for approval of the transfer, assignment, or sale of rights to obtain the appropriate bond coverage in an amount sufficient to cover the proposed operations in compliance with the bonding rules of Subchapter J. The applicant has the responsibility of obtaining a bond under Subchapter J. As long as a sufficient amount of bond is provided and the bond meets the requirements of Section 509 of the Act and Subchapter J of the rules, it does not matter how the bond is obtained, whether by transfer, written agreement, new bond, or obtaining a performance bond as set out in previous Section 788.18(a)(1)(i-iv). Those paragraphs have therefore been deleted as unnecessary.

One commenter stated that final Section 774.17(b), which was proposed as Section 773.29(b), must clearly establish that the applicant shall obtain the necessary bond coverage, supply the required information, and gain approval prior to such transfer, assignment, or sale of rights as required in Section 511(b) of the Act. The commenter believed that a basic requirement should be that the successor make the showings required in Section 509 of the Act relating to bond coverage, prior to approval of a transfer, assignment, or sale of permit rights.

The commenter believed it is quite possible that even the previous rule was too liberal in allowing the permittee to transfer his interest in permit rights. The commenter stated that House Report 95-218 (95th Cong., 1st Sess., 1977), on page 93, reflects "grave concern" with adequacy of bond coverage for operations and suggests that the only permissible bond arrangement would be where the permittee's performance bond continues in full force and effect.

The commenter added that it is arguable whether OSM can allow replacement of a bond or transfer of liability and that if replacement or transfer is allowed, then the regulatory authority must assure that there is clear liability for all disturbances and alternative bond arrangements of the same or greater amount and degree of assurance.

In response to the comments concerning bonding, OSM notes that Section 774.17(d)(2) requires submittal of a sufficient performance bond prior to approval of a transfer. OSM has rejected the comment that it should reinstate the requirements of previous Section 788.18(a)(1). These requirements are covered in Subchapter J and need not be duplicated in the permit rules.

OSM has also rejected the comment which suggests that the only permissible bond arrangement would be where the permittee's performance bond continues in full force and effect. Page 93 of House Report No. 95-218, cited above, states that the successor in interest is "granted the right to continue the surface coal mining operation while his application for a permit is under consideration by the regulatory authority, so long as the operation is in compliance with the permittee's mining and reclamation plan and so long as the permittee's performance bond continues in full force and effect."

By recognizing that the permittee's performance bond was to continue while the application is under consideration by the regulatory authority, Congress clearly contemplated the possible transfer of both permit rights and bond liability. In order for the concept of a successor in interest to be workable, OSM must provide an option of allowing transfer of bond or thwart the intent of Congress. The transfer of bond assures there is clear liability for all disturbances and that there is a performance bond of the appropriate amount and same degree of assurance.

In some instances, replacement of the bond may provide greater assurance of reclamation than continuation of the original performance bond if intervening economic circumstances made the original bond inadequate. The reference in paragraphs (b)(3) and (d)(2) to the bonding requirements of Subchapter J ensure that the operation will be covered by a sufficient performance bond.

SECTION 774.17(c) - PUBLIC PARTICIPATION.

Section 774.17(c) provides for public participation in the approval decision as provided for in previous Section 788.18(b)(2). No comments were received on this section, and it has been adopted as proposed in Section 773.29(c).

SECTION 774.17(d) - CRITERIA FOR APPROVAL.

Section 774.17(d) establishes criteria for approval of transfers, assignments, or sales of permit rights. In accordance with Section 511(b) of the Act, it provides that no transfer, assignment, or sale may be made without the written approval of the regulatory authority, but does not require a regulatory authority to approve such transfers,

assignments, or sales. Thus, a regulatory authority may decide that it will not allow permit rights to be transferred, assigned or sold and will require instead that the proposed successor apply for a new permit.

Section 774.17(d)(1) is a new section requiring a finding that the successor in interest is eligible to receive a permit under the standards set out in Section 773.15. Many of those standards for permit approval would be satisfied simply by the successor's agreement in the application for approval of the transfer, assignment, or sale to operate the mine in accordance with the existing permit. This would normally satisfy the requirements of Section 773.15(c) (3), (4), (5), (6), (8), (9), and (10).

The requirements of Section 773.15 (b) and (c)(1), (2) and (7) depend on the characteristics or past behavior of the individual operator rather than the plan for conducting the operation. Information on the successor's past history of violations is required to satisfy Section 773.15(b). The application for approval should be complete and accurate in compliance with Section 773.15(c)(1). The regulatory authority may require additional information about the successor's ability to accomplish reclamation as described in the original approved permit or it may be able to find that reclamation can be accomplished based on the successor's agreement to operate according to the permit. The successor is also required by Section 773.15(c)(7) to submit proof that it has paid all abandoned mine land reclamation fees that it is required to pay under Subchapter R.

Previous Section 788.18(c)(1) which required a finding that the successor would comply with the standards specified in the permit approval rules, has been deleted as unnecessary since such compliance is required in the existing permit and by the terms of its approval. The findings in previous Section 788.18(c)(2) have been included in the criteria of final Section 774.17(d)(2). Instead of requiring the successor's bond to be at least equal to the bond of the original permittee, the new rule requires the successor's bond to be judged according to the standards of the bonding rules. This will better ensure that the amount of the bond is sufficient. As rewritten, paragraph (d)(2) also includes the provision of previous Section 788.19(a) allowing the successor to obtain the bond of the original permittee.

Section 774.17(d)(3) is also new and recognizes that the regulatory authority may impose additional requirements for approval of transfers, assignments, or sales of the permit rights.

One commenter noted that the reference in Section 774.17(d)(1), which was proposed as Section 773.29(d)(1), to Section 773.15(b) requires a showing by the applicant that any violation pertaining to a surface coal mining and reclamation operation owned or controlled by the applicant has been corrected or is in the process of being corrected or is the subject of an appeal. The commenter noted that this would appear to require the successor to show that violations on the successor's other operations have been corrected or are being corrected or appealed. The preamble to the proposed rule, however, stated that paragraph (d)(1) is meant to "ensure that the operators not transfer, assign, or sell permit rights to avoid correcting violations." The commenter stated that this seems to say that paragraph (d)(1) is addressed to violations on the permit which is being transferred. The commenter believed the regulation and the preamble should clarify that the violations referred to are those on the successor's other operations.

The commenter believed that paragraph (d)(3) should be modified to require that "If violations exist on the permit area, the regulatory authority may require that immediately upon transfer the violations be corrected or that interim measures be taken to avoid environmental harm." The commenter also stated that there are other conditions of permit approval that should be applicable, such as the requirement that the successor should not be delinquent in payment of reclamation fees. He suggested that an additional item be added to cover all applicable permit conditions. The commenter suggested approving a transfer only if the successor would be eligible to receive a permit in accordance with Section 773.15.

OSM agrees with the commenter that the applicant (successor) must show that the violations on the successor's other operations have been corrected or are being corrected or appealed so that the provisions of Section 773.15(b) are met. OSM has accepted the commenter's suggestion that a transfer, assignment, or sale of permit rights be approved only if the successor would be eligible to receive a permit under Section 773.15 (b) and (c). There is no need to incorporate Section 773.15(d) in final Section 774.17(d)(1) because bonding requirements are addressed in Section 774.17(d)(2).

The commenter makes a valid point that the language of the proposed rule and its explanation in the preamble were inconsistent. The change to Section 774.17(d) (1) described above ensures that the successor has an acceptable compliance record on its other operations but leaves the problem of transfers to avoid correcting violations unaddressed.

OSM has decided not to include a provision requiring the successor to correct existing violations immediately upon transfer of the permit. The permittee, whether it is the original permittee or the successor, has a continuing obligation to comply with the regulatory program and to correct any outstanding violations. There is no need for further sanctions against an operation beyond those provided in the provisions on enforcement of the regulatory program.

SECTION 774.17(e) - NOTIFICATION.

One commenter believed a new subsection should be added to final Section 774.17, which was proposed Section 773.29, providing that the successor give notice to the regulatory authority of the consummation of the transfer, assignment, or sale of rights, because the rule as proposed would require that the permittee receive prior written approval of the transfer, but does not require notice to the regulatory authority once the transfer is actually made between the parties. There could thus be the possibility that the transfer was approved but not completed, and an issue might arise as to which party was actually conducting the mining on the permit area.

OSM agrees with the commenter that the successor should notify the regulatory authority when the change officially occurs. This will allow the regulatory authority to make an orderly transition in terms of its own records and will eliminate confusion as to which party is responsible for the operation.

This completes the process of changing from one permittee to another in compliance with Sections 511(b) and 506(b) of the Act.

Under Section 774.17(e)(1), the regulatory authority must notify the permittee, successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings with respect to the application. It is only logical that the regulatory authority must notify the permittee and successor of its decision. Commenters should also be notified as provided for with respect to applications for permits, renewals, and revisions under Section 773.18(b). Also, OSM needs to be kept informed of such decisions when it is not the regulatory authority.

SECTION 774.17(f) - CONTINUED OPERATION UNDER EXISTING PERMIT.

The requirements of previous Section 778.18(c)(3) have been incorporated in final Section 774.17(f) as a condition for continued operation under the existing permit. The term "original permit" in previous Section 788.18(c)(3) has been changed to "existing permit" to avoid confusion since the original permit could have been revised by the prior permittee. Previous Section 788.19(b) has been deleted, since its requirements are included in final Section 774.17(f) which requires the successor to obtain a new or revised permit in compliance with Subchapter G if he wishes to deviate from the terms of the existing permit. Previous Section 771.21(b) (4) has also been deleted as unnecessary. The successor is required to operate under the existing permit until he obtains a revision or new permit, so specifying time frames for applying for a revision is not necessary.

No comments were received on this paragraph, and it was adopted as proposed (Section 773.29(e)) except that it was renumbered as Section 774.17(f).

D. PART 775 -- ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

SECTION 775.1 - SCOPE AND PURPOSE.

Section 775.1 provides the scope and purpose of Part 775. It is previous Section 787.1 and was proposed as part of Section 773.1. No comments were received on this section.

SECTION 775.11 - ADMINISTRATIVE REVIEW.

SECTION 775.11(a) - GENERAL.

Section 775.11(a), which was proposed as Section 773.21(a), deals with the rights to administrative review of permit decisions. This section is the previous Section 787.11(a), with minor editorial changes. The word "final" has been deleted and will no longer modify "decision." If a permittee seeks an appeal of the regulatory authority's initial decision, that appeal is brought before the regulatory authority and its decision is therefore not "final" until after issuance of the decision on the appeal.

One commenter concurred with the deletion of the term "final." Another commenter believed that, in the interest of using terms which are defined in the rule, the rules should refer to a "person with an interest which is or may be adversely affected."

Another commenter objected to "any person with an interest which may be adversely affected may request a hearing on reasons for the decision." He felt that this concept opened the permit process to unending delays through frivolous requests for hearings.

Several commenters proposed to add a modifying phase to exploration -- "operations where more than 250 tons of coal are to be removed." Others wanted to add the phase, "explorations which substantially disturbs the land."

OSM agrees with the comment that the phase granting standing for administrative review should be "any person with an interest which is or may be adversely affected" since that is the language of Section 514(c) of the Act. OSM disagrees with the commenter who wanted to eliminate the opportunity for such a person to request a hearing, because that right is authorized in Section 514(c) of the Act.

OSM has agreed to add a reference to Part 772 concerning exploration operations. This provision applies only where approvals of exploration is required under Part 772.

SECTION 775.11(b) - ADMINISTRATIVE HEARINGS UNDER STATE PROGRAMS.

SECTION 775.11(b)(1).

Section 775.11(b)(1), proposed as Section 773.21(a)(1), deals with the time period for commencing an administrative hearing and the nature of the hearing itself. It is the same as previous Section 787.11(b)(1), with minor editorial changes. The hearing must be started within 30 days of the request, be on the record, and be adjudicatory in nature. In addition, no person who presided at an informal conference shall preside at the hearing or participate in the decision or any decision on an appeal. No substantive comments were received on this section.

SECTION 775.11(b)(2).

Section 775.11(b)(2), which deals with conditions for temporary relief, is derived from previous Section 787.11(b)(2).

One commenter stated that an ongoing initial program operation, faced with a negative initial administrative decision, will have little or no chance of obtaining emergency relief under the procedures set forth in Sections 775.11

and 775.13, which were proposed Section 773.21 (a) and (b). The commenter believed that an emergency, streamlined process should be provided for mine operators to obtain permission to continue operations pending final denial. The example given was to allow operators to continue mining for 10 days after receipt of an adverse initial decision, and provided the operator files a request for emergency relief within 30 days, he would be allowed to continue until his request was decided.

The commenter believed the burden of proof for such requests for permission to continue until final decision should be drastically less than set forth in Part 777 (proposed Section 773.21) and that a "substantial likelihood of prevailing on the merits" is both impossible to show and inappropriate in view of the nature of the status quo which he believed, assumes an existing, complying mine. The commenter suggested that an appropriate standard would be for an operator to show (1) that no permanent, irreparable, and substantial damage is likely pending appeal; (2) that the balance of hardships and public interest favor continued mining, pending appeal; and (3) that the operator's appeal presents a "legitimate argument" constituting "fair ground for litigation on the merits." The commenter believed that this burden is akin to that employed in the Federal courts for the granting of emergency injunctive relief and that no higher burden is needed. The commenter suggested that OSM should clarify that the prohibition in Section 775.11(b)(2)(iv), proposed Section 773.21(a)(1)(ii)(D) -- that the relief sought must not be the issuance of a permit where a permit has been denied -- does not mean that a valid initial program operation may not continue under its existing initial program permit pending a final administrative resolution of its application for a permanent program permit. The commenter believed that the granting of such relief to continue operating pending final decision would not be the "issuance of a permit," but that this point should be made explicit in the rules.

The commenter stated that Section 506(a) of the Act provides that persons with initial program permits may continue operations until an initial administrative decision has been rendered, but that it does not require that initial program operations be closed down after an initial adverse decision is rendered. The commenter stated that still less does it require that OSM issue such an "initial" decision on the same grounds that it might apply to mines that were not yet existing. The commenter believed existing operations may lose their automatic right to proceed upon issuance of an administrative decision, but stated that OSM may, as suggested above, provide procedures for their continued operation pending appeal, upon appropriate showings.

Section 506(a) of the Act allows a permittee with a permit issued in accordance with the initial program to continue operating beyond the 8-month period allowed for decisions on permanent program permit applications if an initial administrative decision has not been rendered. As the commenter suggests, operation pursuant to an initial program permit would be able to continue during the 8-month period for decisions, even if an initial administrative decision on the application was negative.

OSM agrees with the commenter that the status quo for an existing operation with a valid permit under the permanent program would be an operating mine. As discussed in the preamble to the previous rule at *43 FR 41727-41728*, general principles of administrative law provide that temporary relief is available only to restore parties to the status quo prevailing prior to the governmental decision from which relief is sought. OSM reaffirms its statement at *44 FR 15105* that because existing initial program operations would not have held permanent program permits, there would be no status quo to restore.

OSM disagrees with the commenter's interpretation of the exception in Section 506(a) of the Act for permitted initial program operations. The Act allows an initial program operation to continue "if an application for a permit has been filed * * * but the initial administrative decision has not been rendered." (Emphasis added.) OSM believes that this language does require that such operations be shut down if an adverse decision is rendered and the 8-month period has already passed.

The Act allows initial operations to continue under two conditions: (1) if an application for a permit has been filed and (2) if the initial administrative decision has not been rendered. If either of the conditions is not satisfied, the operator loses the privilege granted by Section 506(a) of the Act to operate beyond the normal time limit.

Granting temporary relief from an initial administrative decision would be inconsistent with the second of the two conditions.

Applications for renewal of a permanent program permit present a different status quo than initial program operations seeking their first permanent program permit. Since these operators are authorized to operate under the permanent program, their status quo is an operating permitted mine. Of course, such operators may continue under their existing permit until it expires even if the initial administration decision is to deny the renewal.

Temporary relief should not be necessary in the majority of cases if the operator files the renewal application sufficiently in advance of the end of the current permit term to account for the time involved for governmental action and its appeal processes. The discretionary authority granted to the regulatory authority by Section 514(d) of the Act and Section 775.11(b)(2), to prescribe such relief "as it deems appropriate," provide sufficient flexibility to avoid most potential problems in renewal situations. For example, the regulatory authority might deem it appropriate that an operator continue reclamation activities or work to correct outstanding violations pending a hearing on the merits of a denial of a renewal application. Such limited continued operations might be necessary to protect the public health and safety or the environment, but would not constitute the issuance of a permit allowing full operations. For those situations where such limited relief would be insufficient, OSM has modified Section 775.11(b)(2)(iv) to give regulatory authorities the discretion to grant temporary relief that would allow the operation to continue under its previous permanent program permit until a decision is rendered on the merits of the appeal of the renewal denial.

The third possible situation is that of denial of a permit for an entirely new operation. OSM has not modified the prohibition against granting temporary relief to such applicants. As was explained in the preamble to the previous proposed rule *(43 FR 41727-41728,* September 18, 1978), the status quo in such situations does not include authorization for mining operations to proceed. OSM continues to interpret Sections 102 (b), (c), (d) and (e); 201(c); 507, 508, and 510 of the Act to require that coal mining be allowed only after the regulatory authority has carefully scrutinized the application and determined that the provisions of the Act will be met and that reclamation of the area to be disturbed is feasible. OSM still believes that a full adjudicatory hearing on the merits is necessary to provide the careful scrutiny essential before a decision is made to reverse a determination that reclamation will not be feasible.

OSM has not adopted the commenter's suggested changes in the standards for granting temporary relief except as noted above. The standards set in Section 775.11(b)(2) (i)-(iii) are taken from Section 514(d) of the Act which limits the granting of temporary relief to cases which meet these conditions. OSM also notes that the standard of proof in paragraph (b)(2)(ii) is similar to the standard for emergency injunctive relief in Federal courts.

SECTIONS 775.11(b) (3)-(5).

Section 775.11(b)(3), which deals with the powers and responsibilities of the hearing authority, the record of the hearing, and ex parte contacts, is the same as previous Section 787/11(b)(3), with minor editorial changes. Section 775.11(b)(4), which deals with the responsibilities of the hearing authority, is the same as previous Section 787.11(b)(4). Section 775.11(b)(5), which assigns the burden of proof, is the same as previous Section 787.11(b)(5).

No comments were received on Section 775.11(b) (3)-(5), and these paragraphs will remain unchanged from the proposal.

SECTION 775.11(c) - ADMINISTRATIVE HEARINGS UNDER FEDERAL PROGRAMS AND FEDERAL LANDS PROGRAMS.

Section 775.11(c), which was proposed Section 773.21(a)(2), is the same as previous Section 787.11(c), with the changes described below. This section identifies the applicable requirements for hearings on permit applications under Federal programs and Federal lands programs except as may be modified by a cooperative agreement. The standards of *5 U.S.C. 554* apply to such hearings.

One commenter opposed the requirements that *5 U.S.C. 554* and 43 CFR Part 4 govern administrative hearings pertaining to Federal lands. The commenter stated that when a State has a cooperative agreement, only State hearing

procedures should apply. The commenter believed that the person protesting should not be authorized to choose his forum or allowed two "bites of the apple" by pursuing State and Federal administrative review.

OSM agrees with the commenter that, depending on the terms of the cooperative agreement, the State administrative procedures could apply. However, OSM must, through approval of the regulatory program and cooperative agreement, assure that administrative procedures as effective as those of the Administrative Procedure Act (APA) would apply. Thus, OSM has changed this section by adding that a cooperative agreement may specify which hearing procedures will apply on Federal lands when the regulatory authority is the State. The standards of *5 U.S.C. 554* (Section 5 of the APA) and 43 CFR Part 4 apply where there is a Federal program and on Federal lands where there is no cooperative agreement or where the cooperative agreement does not provide for the applicability of alternative administrative procedures.

SECTION 775.13 - JUDICIAL REVIEW.

Section 775.13, which was proposed Section 773.21(b) covering judicial review, is basically the same as previous Section 787.12.

SECTION 775.13(a) - GENERAL.

Section 775.13(a), which sets out the requirements for standing to seek judicial review of permit decision, is the same as previous Section 787.12(a), with minor editorial changes.

One commenter thought there should be reference in paragraph (a) to "paragraph (b) or (c)." The commenter also believed that Section 775.13(a)(2), which was proposed as Section 773.21(b)(1)(ii), is unclear as to which of the many time limits under the Act is referenced.

The commenter is correct that there should be a reference in paragraph (a) to paragraph (b) or (c), as was provided in previous Section 787.12(a). OSM also agrees with the commenter concerning the need to specify the time limits, so the word "applicable" was added to clarify this section.

SECTION 775.13(b) - JUDICIAL REVIEW UNDER STATE PROGRAMS.

Section 775.13(b) is the same as previous Section 787.12(b)(1), with editorial and citation changes. Section 775.13(b) deals with judicial review under State programs. No comments were received on this section, and the rule has been adopted as proposed.

SECTION 775.13(c) - JUDICIAL REVIEW UNDER FEDERAL PROGRAMS AND FEDERAL LANDS PROGRAMS.

Section 775.13(c) is the same as previous Section 787.12(b), with one substantive change and editorial and citation changes. Section 775.13(c) provides for judicial review under Federal programs and Federal lands programs.

Two commenters stated that when a State has a cooperative agreement, judicial review should be in a State, not Federal court.

OSM agrees with the commenters that, depending on the terms of the cooperative agreement, judicial review of State regulatory authority actions under the Federal lands programs should be in the State courts. However, OSM must, through approval of regulatory programs and cooperative agreements, assure that judicial review as effective as that provided by the Federal regulations will occur. To clarify that cooperative agreements may provided for judicial review by State courts, OSM has added a clause to this provision. Judicial review will be by Federal courts where there is a Federal program or, for Federal lands, where there is no cooperative agreement or the cooperative agreement does not allow for the State court review.

As revised, this provision is consistent with Section 526 of the Act and OSM's revised Federal lands program *(48 FR 6912,* February 16, 1983). Under the new Federal lands rule, there may be certain instances where a permit may be issued for surface coal mining operations on Federal lands without Secretarial approval of the permit under the Act. In such instances, Section 526(e) of the Act requires State court review.

E. PART 777 -- GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

SECTION 777.1 - SCOPE.

General content requirements for permit applications previously set out under Sections 771.1 and 771.2 have been combined under the heading "Scope" in final Section 777.1, for simplicity and elimination of excess verbiage. This section states that Part 777, which was proposed Part 775, establishes minimum requirements for the general content of permit applications under a State or Federal program.

No substantive comments were received for this section, and OSM has adopted this section as proposed.

SECTION 777.10. - INFORMATION COLLECTION.

This section codifies approvals by the Office of Management and Budget. No comments were received on this section, which was proposed as Section 775.10.

SECTION 777.11 - FORMAT AND CONTENTS.

SECTION 777.11(a).

Section 777.11 covers the format and contents of applications, which were given in previous Section 771.23. The requirements of previous Section 771.23(b) have been reworded and reorganized into separate paragraphs in final Section 771.11(a). Section 777.11(a)(1) incorporates the requirement in previous Section 771.23(b) that the applications contain current information but also clarifies that such information must be submitted in keeping with the more specific permit information requirements of Subchapter G. Section 777.11(a)(2) contains the requirement in previous Section 771.23(b) that applications be clear and concise. The provision in previous Section 771.23(a) that applications must be filed in the format required by the regulatory authority has been transferred to Section 777.11(a)(3).

Several commenters wanted deletion of the terms "adjacent area" and "potentially impacted offsite area" used in proposed Section 775.11(a)(1), which is final Section 777.11(a)(1). These commenters claimed that the rationale for using these terms was vague and that the latter was an undefined term. The commenters also stated that the District Court for the District of Columbia has held that Sections 507 and 508 of the Act require information pertaining to areas outside the permit area only for hydrologic information.

One commenter suggested deleting proposed paragraphs (a)(1) and (a)(2) because an application would have to contain current information to make the required determinations and because the terms "clear and concise" are subjective.

OSM has dropped the term "potentially impacted offsite area" because it is an undefined term. The terms "adjacent area" and "permit area" are replaced by the phrase "as required by this subchapter" to indicate that information off the permit area must be submitted only as required by specific permit information rules and also assure that all required information, such as the legal, financial, and compliance information not restricted to the proposed permit area, is provided.

OSM has decided not to delete the requirement that permit applications be clear and concise because clear and concise applications will reduce the time necessary to review and make decisions on the applications. These terms have well established and understood meanings.

SECTION 777.11(b).

Section 777.11(b) is a new section which gives the applicant instructions on how to present reference material in the application. References must either be available to the regulatory authority or be provided by the applicant. If provided by the applicant, they may be abstracted or the relevant portions may be photocopied. This rule ensures that the regulatory authority has access to all the technical information relied upon by the applicant.

One commenter supported the change on referenced materials. Several commenters suggested modifying the second sentence of Section 777.11(b) which was proposed Section 777.11(b), to limit photocopying of referenced materials to only those materials that are not readily available to the regulatory authority. They believed this would eliminate unnecessary burdens on operators holding several permits as they could reference much of the general information that would be identical for each operation. Other commenters supported the proposal to not require referenced materials to be included in the permit application if they were readily available to the regulatory authority.

OSM agrees that the second sentence of proposed Section 777.11(b) needed modification to be consistent with the first sentence and the preamble. To clarify that applicants are not required to submit reference materials if the application includes all needed information, the rule has been changed to read: "If used in the application, referenced materials shall either be provided . . . or be readily available to the regulatory authority. If provided, relevant portions . . . shall be presented . . . by photocopying or abstracting and with explicit citations." This clarifies the intent of the section to reduce the burden on applicants.

SECTION 777.11(c).

Previous Section 771.27, requiring applications to be verified by an official of the applicant, has been transferred to final Section 777.11(c). No comments were received on this section. OSM has adopted the rule as proposed with the addition of language clarifying that this section applies to all applications for action on a permit including permit revisions, permit renewals, and transfers, sales and assignments of permit rights.

SECTION 777.13 - REPORTING OF TECHNICAL DATA.

SECTION 773.13(a).

Previous Section 771.23(c), which required that data be identified by date and methodology, as well as requiring the name of the person who collected or analyzed the data, has been transferred to Section 777.13(a), which was proposed as Section 775.13(a).

One commenter suggested that a definition is needed for "technical data," since there is an explicit requirement for certification of the data. Another commenter wanted this section to include the requirement of previous Section 771.23(d) that the name and address of officials consulted in preparation of the application be provided so the regulatory authority can determine if the information provided is accurate.

OSM does not agree that a definition of "technical data" is needed here or in Section 701.5. However, OSM wants to clarify that technical data includes all information required for Parts 779, 780, 783, 784 and 785.

OSM has decided not to require inclusion of names and addresses of consulting officials since any technical investigation must be planned by qualified individuals. Regulatory authorities may, of course, request the names if they feel the need for further verification.

SECTION 777.13(b).

Section 777.13(b), which was proposed as Section 775.13(b), is a new section which identifies who should plan and conduct technical analyses.

Two commenters stated that the requirement in the proposed section that technical investigations be planned, directed, and certified by a qualified registered professional engineer or professional geologist violated Section 702(a)(2) of the Act which provides that nothing in the Act shall supersede, amend, modify, or repeal any provisions of the Federal Coal Mine Health and Safety Act of 1969 (FCMHSA) or its rules. The commenters stated that maps prepared for and required by the FCMHSA should be acceptable under the Surface Mining Act without certification by a professional engineer or professional geologist.

Numerous commenters objected to the proposed requirement in the section that all technical investigations be planned by, or under the direction of, and certified by a qualified registered professional engineer or geologist. These commenters gave several reasons for deleting or modifying this requirement.

First, they argued there is no guarantee that any aspect of an investigation would benefit from the proposed rule. Second, the rule was not cost effective. Third, State regulatory authorities do not have similar requirements. Fourth, the specified personnel are not available. Fifth, the applicant's personnel are the most experienced and qualified to direct technical investigations. Other commenters suggested that other disciplines such as soil and environmental scientists, biologists, archeologists, and land surveyors should be the technical personnel to direct and verify the technical investigations in their respective fields rather than professional engineers or professional geologists who are not qualified in these fields. Alternative regulatory language was suggested which would require that technical investigations be directed and certified by the appropriate qualified professional. Sixth, Federal law is in direct conflict with State law in 13 States, which specifically limit the preparation and certification of property maps to professional land surveyors. Other commenters wanted the section deleted completely.

Other commenters objected that the proposed rules prevented land surveyors from performing their traditional function of preparing maps for coal mines. These commenters suggested alternative language which would allow maps, plans, and cross sections to be planned, directed, and certified by a professional licensed or qualified to make such certification under State law. These commenters believed that surveyors should be specifically included as such qualified professionals. One justification given for this was that Section 507(b)(14) of the Act is ambiguous in requiring professional engineers to certify maps, plans, and cross sections. Land surveying, it was argued, is a branch of engineering and could, therefore, be added as one of the certifying professions without changes to the Act. Other commenters recognized that Section 507(b)(14) of the Act clearly limits direction and certification of maps and cross sections to professional engineers and geologists. They suggested that OSM pursue a change in the statute.

Section 507(b)(14) of the Act specifies that maps and cross sections be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist. The type of information to be included on such maps and cross sections is spelled out in detail in that section and is not necessarily the same information provided on maps prepared under the Federal Mine Safety and Health Act of 1977 (FMSHA), the successor to the FCMHSA. It may be possible to use such maps to meet the requirements of both Acts, but the map certification requirements of Section 507(b)(14) must still be met. The requirement that maps used to meet the requirements of the Surface Mining Control and Reclamation Act be certified by a qualified professional engineer or professional geologist does not in any way amend or repeal the FMSHA or any of its rules concerning maps.

OSM has adopted the suggestion that this section be modified to allow technical analyses or investigations to be directed by qualified professionals in their field of expertise. These analyses may include any scientific or technical studies or tests necessary to comply with the technical or environmental information requirements of Parts 779, 780, 783, 784, or 785, except those performed to comply with Section 507(b)(14) of the Act.

Under Section 507(b)(14) of the Act, cross sections, maps, or plans of the land to be affected must be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture. These requirements are covered in Sections 779.25 and 783.25 which were not proposed to be amended. Because Sections 779.25 and 785.25 are not changed by these rules, the comments suggesting that Section 507(b)(14) is ambiguous and would allow land surveyors to prepare such plans where a State considered surveying to be a branch of engineering have not been reached. Such considerations are more appropriately addressed in the context of the State program involved. At a minimum, land surveyors may prepare such maps under the direction of and if certified by the proper registered

professional. In addition, land surveyors may prepare the maps required in Sections 779.24 and 783.24. The maps required by these sections are the type land surveyors have traditionally prepared since they deal with locations of buildings and other land surface features and boundaries. On the other hand, the cross-sections and plans required by Sections 779.25 and 783.25 include items not within surveyors' traditional areas of expertise such as location of aquifers, nature of the stratum below the coal seam, quality of subsurface water, and the elevation of the water table. For these reasons OSM has decided not to adopt the suggestions of the commenters.

SECTION 777.14 - MAPS AND PLANS: GENERAL REQUIREMENTS.

Section 777.14, which is previous Section 771.23(e), deals with the general requirements for maps and plans to be submitted in the permit application. This section requires all maps submitted with an application to include the same information as is set forth on topographic maps of the U.S. Geological Survey. Specific map scales are also set depending on whether the map is of the permit area or some other area. Finally, all maps must distinguish between phases of the operation showing areas mined prior to August 3, 1977, prior to May 3, 1978, prior to approval of the permanent regulatory program, and after the estimated date of issuance of a permanent program permit.

One commenter stated that this section needed to be included in these final rules to ensure uniformity in map preparation. OSM agrees and has retained the standards for maps and plans.

SECTION 777.15 - COMPLETENESS.

Section 777.15 requires all applications to be complete and, with some reorganization, transfers the second sentence of previous Section 771.23(a) to final Section 777.15.

Several commenters correctly noted that the proposed reference to Part 782 in paragraph (b) would be inappropriate if Part 782 was combined with Part 778 as proposed.

In keeping with the final rules adopted which includes the provisions from previous Part 782 in final Part 778, OSM has changed the reference in Paragraph (b) to Part 778.

OSM has adopted this section as proposed.

SECTION 777.17 - PERMIT FEES.

Previous Section 771.25, requiring applications to be accompanied by a permit fee, has been transferred, with minor editorial changes, to final Section 777.17.

One commenter objected to any requirement for permit fees on the theory that the government realizes more money through taxation than can be justified for the surface coal mining program.

Section 507(a) of the Act requires each permit application to be accompanied by a fee, the amount of which is to be determined by the regulatory authority. Section 777.17, which is similar to Section 771.25 of the previous rules, implements the statutory requirement. The purpose of the permit fee is to offset the cost of processing and enforcing the permit. Therefore, the regulatory authority may not set the fee higher than its administrative and enforcement costs but may set a lower fee in its discretion. OSM is currently in the process of developing permit fees applicable to Federal programs and to permits for Indian lands.

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

Information submitted in permit applications under Part 778 will be used primarily to enable the regulatory authority and the public to ascertain the nature of the entity which plans to mine coal and those entities which have financial interests and public record ownership interests in both the mining entity and the property which is to be mined. In addition, other nontechnical information needed for processing and approval or disapproval of the

application is required. Part 778 will incorporate previous Part 782 on underground mining permit applications -- minimum requirements for legal, financial, compliance and related information. Following is a discussion of the rules adopted and responses to comments received on the proposed rules.

In response to comments received on proposed Part 778, some minor changes have been made to the final rules.

SECTION 778.1 - SCOPE AND PURPOSE.

To avoid repetition final Section 778.1 combines previous Sections 778.1, 778.2, 778.4 and 778.11 as well as the comparable sections in previous Part 782. Only minor editorial changes have been made from the proposed rule.

SECTION 778.10 - INFORMATION COLLECTION.

This section codifies approvals of information collection requirements by the Office of Management and Budget. No comments were received on this section. It has been adopted as proposed with the additional citations to the Act.

SECTION 778.13 - IDENTIFICATION OF INTERESTS.

Section 778.13 requires an applicant to provide specific information regarding the proposed surface coal mining operation, including type of ownership of the applicant, names and addresses of the principals involved, information on the mining history of the applicant, information on the surface and mineral properties, Mine Safety and Health Administration (MSHA) numbers, and interests held by the applicant on lands contiguous to the area to be mined.

Three commenters proposed adding the words "or reference" following "contain" in the introductory sentence. The commenters stated that the change would make it clear that materials, such as other permit applications, already in the regulatory authority's possession could be cross-referenced. They thought that the change would save operators and regulatory authorities time, money, and unnecessary burden by eliminating the need to duplicate material already on file.

The commenters also believed the change would be consistent with the August 21, 1979, Order of the District Court for the District of Columbia which held that an applicant may incorporate data already in the possession of the applicant or regulatory authority by references in its permit application. (See, In re: Permanent Surface Mining Regulation Litigation, No. 1144, D.D.C. August 21, 1979, (order on motions for preliminary relief).)

Section 777.11 of the final rules covers the general format and content of a permit application. Section 777.11(b) allows cross references wherever feasible to eliminate burdens, increase efficiency, and reduce expenses associated with filing applications. It is not necessary to repeat this provision in Part 778. However, because much of the information requested in Part 778 is subject to change, applicants are cautioned that Section 777.11(a) requires submitted materials to be current. Therefore, updating the information provided in a given application may be necessary.

Section 778.13(a) requires a statement identifying the applicant's type of business entity. Section 778.13(b) requires the names, addresses, and telephone numbers of the applicant, the operator, and the resident agent. No comments were received on these paragraphs. The rules and preamble as proposed remain valid and are adopted as final.

Section 778.13(c) requires applicants, other than single proprietorships, to provide the names and addresses for each officer, partner, principal shareholder, and director, and the names under which the applicant, partner, or principal shareholder previously operated a surface coal mining and reclamation operation with the 5 years preceding the date of application.

Without elaborating further, one commenter thought that the previous Section 778.13(c) should be reinstated. Another commenter supported deleting the provision. The information being requested in final Section 778.13 aids in meeting the requirements of Section 507(b)(4) of the Act. The final rule is adopted as proposed.

Section 778.13(d) requires a statement identifying any pending surface coal mining permit applications and all current and previous permits held by the applicant, partner, or principal shareholder during the 5 years preceding the application.

One commenter supported the 5-year limit as more realistic and less burdensome than the time frame set by the prior rule. OSM agrees with this comment and has, therefore, adopted the provision as proposed.

Section 778.13(e) requires the names and addresses of each legal or equitable owner of record of the surface and mineral property to be mined, the holder of record of any leasehold interest, and any purchaser of record under real estate contract for the property to be mined. This section combines the requirements of previous Section 778.11(a)(2-4).

A commenter suggested deleting the phrase "or equitable." In the commenter's opinion, requirement did not appear in the Act and locating all equitable owners would be extremely difficult and burdensome. The same commenter suggested changing the word "property" to "estate" to avoid confusion and to reflect more accurately the type of information required. Another commenter wanted the term "leasehold interest" defined to exclude subsurface noncoal leasehold interest (i.e. oil and gas leases).

It is important for the regulatory authority to have information about the equitable owners of record of the property to be mined so as to locate them easily if their interests would be adversely affected by the proposed operations, and, in the event of issuance of a notice of violation, to locate all potentially responsible parties. This requirement should not pose an additional burden on applicants, because equitable owners of record can be identified at the same time that legal owners of record are identified during searches of the public property records.

OSM has retained the word "property" as the word is more generally understood. Furthermore, the word "estate" could be interpreted to apply only to coal whereas the word "property" is more readily understood to include surface rights. Additionally, Section 507(b)(1) of the Act does not differentiate between coal and noncoal leasehold interests. For further discussion of these issues, refer to the previous response to comments for definitions at Section 701.5.

Section 778.13(f) requires information identifying contiguous property owners. No comments were received on the section. OSM has adopted the section as proposed.

Section 778.13(g) requires Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures. Two commenters suggested modifying the language so that MSHA numbers would be provided "if available" because the numbers might not be available at the time an application is filed.

This suggestion is rejected. The information is needed to aid the regulatory authority in coordinating its review of the permit application with MSHA so that any potential conflicts between the regulatory requirements of the Mine Safety and Health Act and the Act can be resolved. Including the recommended phrase would weaken the intent of the rule and possibly encourage applicants not to submit the MSHA numbers. These numbers must be submitted as soon as they are known to the applicant if not available at the time initial filing of the application.

Section 778.13(h) requires information about the applicant's interests in lands contiguous to the area to be mined and provides that the applicant may request that this information be held in confidence. No comments were received on this section. OSM has included a cross reference to the rule concerning confidentiality. Except for this addition, the section has been adopted as proposed.

SECTION 778.14 - VIOLATION INFORMATION.

The basic purpose of Section 778.14 is to secure information for the regulatory authority about whether the applicant has violated any rules or laws pertaining to air or water environmental protection, applicable health and safety standards, or any provision of the Act.

SECTION 778.14(a).

Section 778.14(a) implements Section 507(b)(5) of the Act and requires a statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has had a permit suspended or revoked within the preceding 5 years or a bond or any security forfeited at anytime.

One commenter wanted OSM to clarify what was meant by the phrase "persons . . . under common control with the applicant." The commenter assumed that the proposal required the identification and disclosure of entities which have some controlling person in common with the applicant, i.e., director, officer, principal, or principal shareholder. The commenter suggested that the "controlling" person need not hold the same position in each entity, but must hold some controlling position in all.

The phrase "persons controlled by or under common control with the applicant" is taken directly from Section 507(b)(5) of the Act. The commenter is partially correct in assuming that directors, officers, principals, or principal shareholders are included in the category of persons under common control with the applicant. In addition, persons controlled by the applicant could also include the operator if other than the applicant, even though such a person may not hold some controlling position in any entity. "Persons controlled by" the applicant could also include operators of mines other than the proposed mine. The intent of this rule is to require information that will allow the regulatory authority to make its determination concerning the past history of compliance by the applicant or other persons actually conducting the surface coal mining and reclamation operation and any other persons whose actions are controlled by the applicant or controlled by someone who also controls the applicant as required by Section 510(c) of the Act. OSM has made no changes to the proposed rule based on this comment.

One commenter supported the proposed 5-year time limit as being more realistic and less burdensome for information on permit suspensions, revocations, and bond forfeitures. Another thought that the 5-year limit appearing in Section 507(b)(5) of the Act applied only to permit suspensions and revocations, and not to bond forfeitures.

OSM has reconsidered the proposed 5-year limitation on bond forfeitures and agrees with the interpretation that the 5-year limit in Section 507(b)(5) of the Act applies only to permit suspensions and revocations and not to bond for forfeiture. Bond forfeiture is serious enough that the full history of such actions should be known and explained as required in Section 507(b) of the Act. The appropriate change has been made in the regulatory language.

SECTION 778.14(b).

Section 778.14(b) requires a brief explanation of the facts involved in each suspension, revocation, or forfeiture listed under paragraph (a) as well as certain identifying information.

A commenter suggested that the requirement to provide the date and amount of a performance bond or similar security be deleted from Section 778.14(b)(1), arguing that the information was unnecessary and had no bearing on the permitting process.

OSM believes that the date and amount of the bond or similar security are important to ensure that the regulatory authority has a complete understanding of the background of each suspension, revocation, or forfeiture. This information would be relevant when making determinations, under Section 510(c) of the Act, that a permit should not be issued because the applicant has a demonstrated pattern of willful noncompliance with the Act which resulted in substantial and irreparable environmental harm. The date and the amount of bond will help the regulatory authority to establish the significance of such a pattern. OSM rejects the commenter's suggestion.

SECTION 778.14(c).

Section 778.14(c) provides for the submission of certain information so that the regulatory authority can have a full and complete understanding of the current status of the applicant's and related person's outstanding violations prior to reaching the determinations required by section 512(c) of the Act. OSM has modified the proposal by also requiring a listing of notices of violation received by any subsidiary, affiliate, or person controlled by or under

common control with the applicant in order to prevent applicants from avoiding the reporting requirements by the use of reorganizations. In addition, this change will aid the regulatory authority in making the determinations regarding violation notices required by section 510(c) of the Act. Other changes in the regulatory language have been made for purposes of clarity or consistency.

Two commenters requested that an applicant's complete notice of violation (NOV) history not be included in every copy of the permit application submitted. The commenters thought that for companies operating numerous mines in many States, the NOV history could be voluminous. Also, they believed that this information would be unnecessary in the review copies that were sent to other agencies which did not have regulatory enforcement powers.

OSM rejects this suggestion primarily because it is important that all application copies being sent to the regulatory authority be identical to aid in the review of their completeness. Also, it is important that the public review copies be complete. OSM recognizes the concern of the commenters about voluminous submissions by large companies operating in more than one State. However, since only the NOV history for the 3-year period preceding the application date is required, OSM does not think that this will be overly burdensome for the majority of applicants.

A commenter suggested, without further elaboration, that the violation notices listed should be limited to those issued within the State where the application was being filed. This comment is rejected because section 510(c) of the Act does not so limit the violation reporting requirement. This information will assist the regulatory authorities to detect patterns of willful violation.

One commenter suggested that Section 778.14(c) require an applicant to list the enforcement actions taken for each violation notice listed.

The final rule meets the requirements of section 510(c) of the Act by providing the regulatory authority with sufficient information to determine whether a pattern of willful violations exists or whether the applicant or related entities have current unabated, uncontested violations. Regulatory authorities may require additional information on the enforcement action taken with respect to each listed violation if they believe such is necessary.

SECTION 778.15 - RIGHT-OF-ENTRY INFORMATION.

Section 778.15 implements sections 507(b)(9) and 510(b)(6) of the Act. It requires the application to contain a description of the documents upon which the applicant bases its legal right to enter and begin mining operations in the permit area and a statement of whether that right is the subject of pending litigation. Based upon comments received, some changes in wording of proposed Section 778.15(a) were made.

A commenter suggested that the language in proposed Section 778.15(a) should be changed to make it clear that right-of-entry information must be submitted "upon which the applicant bases his legal right" not that which "supports" the right to enter and mine.

OSM agrees and has changed the first sentence of final Section 778.15(a) to reflect more correctly the intent of section 507(b)(9) of the Act.

One commenter pointed out that proposed Section 778.15(a) repeated the requirement that the applicant must state whether the right of entry is subject to litigation. OSM has removed the duplicative language. The final rule is similar to previous Section 778.15 except that it now applies to both surface and underground operations. Final Section 778.15(b) provides the information necessary to make the finding required by section 510(b)(6) of the Act regarding the right to extract coal by surface mining methods. Final Section 778.15(c) implements the proviso in section 510(b)(6) that the Act does not authorize the adjudication of property rights disputes.

SECTION 778.16 - STATUS OF UNSUITABILITY CLAIMS.

Section 510(b)(4) of the Act and Section 773.15(c)(3) require the regulatory authority to make a finding prior to the issuance of a permit that the proposed permit area is not within an area designated unsuitable for surface coal mining under Section 522 of the Act. In addition, section 510(b)(4) precludes the issuance of a permit where an area is under study for unsuitability designation in an administrative proceeding pursuant to section 522 (a)(4)(D) and (c) of the Act. Section 778.16 requires the application to contain information about unsuitability determinations and related pending proceedings to aid the regulatory authority in deciding whether the applicant is entitled to an exemption from the unsuitability requirements.

A commenter suggested adding language to Section 778.16(c) to recognize property rights in existence prior to passage of the Act. The commenter also wanted to include a new subparagraph which would exclude noncoal mining operations from the requirements of the unsuitability provision.

These recommendations have been rejected. Under Section 778.16(b) the regulatory authority will have adequate information upon which to determine whether an applicant is entitled to an unsuitability exemption. Noncoal mining operations are already excluded from the coverage of Section 778.16 because sections 510(b)(4) and 522 of the Act and these rules apply only to surface coal mining operations.

With minor changes the final rule contains the same requirements as previous Section 778.16 except that it applies to both surface and underground operations.

SECTION 778.17 - PERMIT TERM.

Section 778.17(a) requires each application to identify the area to be mined during each phase of the proposed mining operation over the life of the mine. The provision implements the requirements of section 507(b)(8) of the Act and was included in previous Sections 778.17(a) and 782.17(a), but was inadvertently omitted from the proposal. The final rule includes this provision from the previous rule with some editorial revisions, to be in accord with the terminology used in these final rules and to refer to both surface and underground operations. No substantive changes are intended.

One commenter pointed out that the preamble to proposed Section 778.17 stated that the requirements of former Section 778.17(a) had been retained. However, the proposed rule in fact deleted the provision. The commenter suggested that the language be reinstated.

OSM agrees that the preamble to proposed Section 778.17(a) was incorrect since previous Section 778.17(a) was not proposed to be retained. The final rule corrects this error.

Section 506(b) of the Act allows a regulatory authority to issue a permit for a term beyond five years based upon a demonstration that the applicant meets certain criteria. These criteria are set forth in Section 778.17(b) and were contained in previous Section 786.25.

A commenter supported OSM's decision limiting the permit term extension to the "initial" term. The commenter thought that the equities for extending the initial permit term would not justify a longer renewal term once the operation had begun.

SECTION 778.18 - INSURANCE.

Section 778.18 requires the permit application to contain either a certificate of liability insurance or evidence of self-insurance in compliance with Section 800.60 and section 507(f) of the Act. No comments were received on this section. OSM has adopted the rule as proposed which is similar to previous Section 778.18 except that it now applies to underground mining operations as well as surface mining operations.

PREVIOUS SECTION 778.19 - IDENTIFICATION OF OTHER LICENSES AND PERMITS.

A commenter disagreed with the proposed omission of previous Section 778.19, which provided for the identification of other licenses and permits. The commenter thought that such information was not readily available to the regulatory authority and that the permittee was in a better position to provide it.

While OSM appreciates the commenter's concern, nevertheless it has determined that this information is not specifically required by the permitting sections of the Act. Rather, under section 503(a)(6) of the Act, regulatory authorities must establish a procedure for coordinating the review and issuance of permits with any other Federal or State permit process which is applicable to the proposed surface mining and reclamation operation. See 30 CFR 731.14(g)(9). The regulatory authorities can use this mechanism to obtain information on other licenses and permits. Moreover, the regulatory authority has the flexibility to set more stringent reporting requirements if necessary. See Section 505(b) of the Act, *30 U.S.C. 1255*(b).

Therefore, OSM has omitted previous Section 778.19.

PREVIOUS SECTION 778.20 - IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION.

No comments were received on the proposed omission of previous Section 778.20 from the final rules. OSM has omitted the provision.

SECTION 778.21 - PROOF OF PUBLICATION.

Section 778.21 requires that a copy of the newspaper advertisement or other proof of publication, which is satisfactory to the regulatory authority and which supplies notice of the filing of the application for a permit, a significant revision of a permit, or a renewal of a permit shall be filed with the regulatory authority not later than 4 weeks after the last date of publication. OSM has modified the proposed rule slightly in response to a comment requesting that the proof of publication of the newspaper advertisement be acceptable to the regulatory authority. This change will allow the regulatory authority to set standards or criteria for proof of newspaper publication. In a related vein, OSM has changed the final rule by adding language to provide for proof of publication for other categories of application which also require public review.

SECTION 778.22 - FACILITIES OR STRUCTURES USED IN COMMON.

OSM adopted Section 778.22 which makes it clear that facilities or structures may be shared by two separate permitted operations: (1) If they are bonded by each permittee; or (2) if agreement is reached and documented as to the respective responsibilities of the parties for the shared facilities or structures.

One commenter supported the proposed new section. A second suggested changing the proposed language so that it would be clear that the permittees must bond the shared facility unless otherwise agreed to by the permittees sharing the facility. A third commenter recommended that the plans for any facility or structure that would be used in common should be included in each permittee's application with the permittees' bonding the facility as if wholly owned and operated. This commenter also suggested that the regulatory authority should view the design and capabilities of such facility in light of the additional "load" upon it.

OSM has adopted the recommendation of the second commenter and has made appropriate modifications to the rule. Each permittee must bond the facility unless otherwise agreed to by the permittees sharing the facility. The agreement must be included in the application and must demonstrate that the full responsibility for the facility or structure will be met. OSM disagrees with the opinion of the third commenter that the plans for the facilities must be included in each application. OSM believes that referencing the plans included in one application by such other application(s) should be adequate. OSM also assumes that the reviewing agency will take into account any additional load upon the design and capability of facilities which may result from shared use.

III. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

The information collection requirements in Parts 773, 774, 777, and 778 were approved by the Office of Management and Budget (OMB) under *44 U.S.C. 3507* and codified under new Sections 773.10, 774.10, 777.10, and 778.10. The information required by these parts will be used by the regulatory authority to evaluate applications for permits, revisions, renewals, or transfers, sales or assignments of permit rights for surface and underground mining activities to ensure that they will be conducted in a manner which meets the goals of the Act.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act *(5 U.S.C. 601* et seq.).

Regulatory Flexibility Act

One commenter disagreed with the determination that the regulations would not have a significant economic impact on a substantial number of small entities. He believed that the impact would be significant on all entities. He viewed the rules as requiring the operator to perform unnecessary and unrealistic studies without benefit, resulting in a monumental waste in money and effort.

OSM disagrees with the commenter's claims and believes that all of the permitting requirements of these regulations are necessary to carry out the purposes and provisions of the Act. (See *30 U.S.C. 1211*(c)(2)). The commenter did not identify those regulations that require "unnecessary and unrealistic studies," or that "waste money and effort." Additionally, the changes from the previous rule will not have such effects. Thus, OSM reiterates its findings under the Regulatory Flexibility Act.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in the "Federal Environmental Impact Statement OSM EIS-1: Supplement" (FEIS) according to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) *(42 U.S.C. 4332*(2)(c)). The FEIS is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, DC. 20240. This preamble serves as the record of decision under NEPA. The final rule is different from the draft final rules published in Volume III of the FEIS in that some paragraphs have been reorganized and additional clarifying language has been added which does not change the findings of the FEIS analysis.

LIST OF SUBJECTS

30 CFR Part 701

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

30 CFR Part 770

Coal mining, Surface mining, Underground mining.

30 CFR Parts 771, 774, 777, 778, 786, 787, and 788

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 773

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

30 CFR Part 775

Administrative practice and procedure, Coal mining, Surface mining, Underground mining.

30 CFR Part 782
Coal mining, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 770, 771, 773, 774, 775, 777, 778, 782, 786, 787, and 788 are amended, as set forth herein.

Dated: September 20, 1983.

William P. Pendley, Deputy Assistant Secretary, Energy and Minerals.

PART 701 -- PERMANENT REGULATORY PROGRAM

SECTION 701.5 - DEFINITIONS.

1. Section 701.5 is amended by revising the definition of the term "applicant" and adding the following definitions in alphabetical order:

* * * * *

ADMINISTRATIVELY COMPLETE APPLICATION means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

* * * * *

APPLICANT means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

APPLICATION means the documents and other information filed with the regulatory authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

* * * * *

COMPLETE AND ACCURATE APPLICATION means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance.

* * * * *

IRREPARABLE DAMAGE TO THE ENVIRONMENT means any damage to the environment, in violation of the Act, the regulatory program, or this chapter, that cannot be corrected by actions of the applicant.

* * * * *

PRINCIPAL SHAREHOLDER means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

PROPERTY TO BE MINED means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

* * * * *

SUCCESSOR IN INTEREST means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

* * * * *

TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority.

* * * * *

VIOLATION NOTICE means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

* * * * *

WILLFUL VIOLATION means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition required by the Act, this chapter, or the applicable program, committed by a person who intends the result which actually occurs.

SECTION 701.11 [Amended]

2. Section 701.11(d)(1) is amended by replacing the references to "30 CFR 786.21" with references to " Section 773.15(c)(6) of this chapter."

3. Section 701.11(d)(2) is revised to read as follows:

SECTION 701.11 - APPLICABILITY.

* * * * *

(d)* * *

(2) The exemptions provided in Paragraphs (d)(1)(i) and (d)(1)(ii) of this section shall not apply to --

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

* * * * *

(Pub. L. 95-87, *30 U.S.C. 1201* et seq .)

PARTS 770 AND 771 -- [REMOVED]

4. Parts 770 and 771 are removed.

5. Part 773 is added to read as follows:

PART 773 -- REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

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

SECTION 773.1 SCOPE AND PURPOSE.

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

SECTION 773.10 - INFORMATION COLLECTION.

The information collection requirements contained in Part 773 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0041. The information is being collected and the recordkeeping is required to meet the provisions of sections 506, 507, 508, 510, 511, 513, 514, 515, and 516 of the Act which provide for submission of all relevant information needed for evaluating the permit applications. The obligation to respond is mandatory.

SECTION 773.11 - REQUIREMENTS TO OBTAIN PERMITS.

(a) All operations. On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining and reclamation operations, unless such person has first obtained a permit issued by the regulatory authority, except as provided for in paragraph (b) of this section.

(b) Continuation of initial program operations.

(1) If a State program receives final disapproval under Part 732 of this chapter, including judicial review of the disapproval, existing surface coal mining and reclamation operations may continue pursuant to the provisions of Subchapter B of this chapter and section 502 of the Act until promulgation of a complete Federal program for the State. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State. Permits that lapse during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

(2) A person authorized to conduct surface coal mining and reclamation operations under the initial regulatory program, or under a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if --

(i) Not later than 2 months following the effective date of a permanent regulatory program, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after the expiration of 8 months from such effective date in accordance with the provisions of the regulatory program;

(ii) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit; and

(iii) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Act, Subchapter B of this chapter, applicable State statutes and regulations, and all terms and conditions of the initial program authorization or permit.

(3) No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

(c) Continued operations under Federal program permits.

(1) A permit issued by the Director pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the State regulatory authority for a State permit to supersede the Federal permit.

(3) The State regulatory authority may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall --

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

(d) Continued operations under State program permits.

(1) A permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

(2) Immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, this chapter, and the Federal program are not violated. If the Director determines that a permit was granted contrary to the requirements of this Act, the Director shall --

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

SECTION 773.12 - REGULATORY COORDINATION WITH REQUIREMENTS UNDER OTHER LAWS.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended, *(16 U.S.C. 1531* et seq.); the Fish and Wildlife Coordination Act, as amended, *(16 U.S.C. 661* et seq.); the Migratory Bird Treaty Act of 1918, as amended, *(16 U.S.C. 703* et seq.); the National Historic Preservation Act of 1966, as amended *(16 U.S.C. 470* et seq.); the Bald Eagle Protection Act, as amended *(16 U.S.C. 668a);* Executive Order 11593; and for Federal programs only, the Archeological and Historic Preservation Act of 1974 *(16 U.S.C. 469* et seq.).

SECTION 773.13 - PUBLIC PARTICIPATION IN PERMIT PROCESSING.

(a) Filing and public notice.

(1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under Section 774.13, or renewal of a permit under Section 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with Section 761.12(d) of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under Section 785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under Section 774.13, or renewal of a permit under Section 774.15 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (d) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the regulatory authority.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under Section 774.13, or a renewal of a permit under Section 774.15, the regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to --

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with section 503(a)(6) or section 504(h) of the Act, or Section 773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) Comments and objections on permit applications.

(1) Within a reasonable time established by the regulatory authority, written comments or objections on an application for a permit, significant revision to a permit under Section 774.13, or renewal of a permit under Section 774.15 may be submitted to the regulatory authority by public entities notified under paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under Section 774.13, or renewal of a permit under Section 774.15 may be submitted to the regulatory authority by any person having an

interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by paragraph (a) of this section.

(3) The regulatory authority shall upon receipt of such written comments or objections --

(i) Transmit a copy of the comments or objections to the applicants; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) Informal conferences.

(1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the regulatory authority hold an informal conference on the application for a permit, significant revision to a permit under Section 774.13, or renewal of a permit under Section 774.15. The request shall --

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the regulatory authority no later than 30 days after the last publication of the newspaper advertisement required under paragraph (a) of this section.

(2) Except as provided in paragraph (c)(3) of this section, if an informal conference is requested in accordance with paragraph (c)(1) of this section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the regulatory authority in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended *(5 U.S.C. 554)*, shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conference held in accordance with this section may be used by the regulatory authority as the public hearing required under Section 761.12(d) of this chapter on proposed relocation or closing of public roads.

(d) Pubic availability of permit applications.

(1) General availability. Except as provided in paragraphs (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) Limited availability. Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) Confidentiality. The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to --

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, *16 U.S.C. 470)*.

SECTION 773.15 - REVIEW OF PERMIT APPLICATIONS.

(a) General.

(1) The regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under Section 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

(b) Review of violations.

(1) The regulatory authority shall make a finding that any surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If such a finding cannot be made the regulatory authority shall require the applicant, before the issuance of the permit, to either --

(i) Submit to the regulatory authority proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the regulatory authority that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under Section 775.13 either denies a stay applied for in the appeal or affirms the violation, then the applicant shall promptly submit the proof required under paragraph (b)(1)(i) of this section.

(2) The regulatory authority may issue a permit conditionally pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section.

(3) If the regulatory authority makes a finding that the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application shall not be granted. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in Section 775.11.

(c) Written findings for permit application approval. No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

(2) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is --

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Parts 764 and 769 of this chapter, to have an area designated as unsuitable for surface coal mining operations, unless

the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to Parts 762, 764, and 769 of this chapter or subject to the prohibitions or limitations of Sections 761.11 and 761.12 of this chapter.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under Section 778.15(b) of this chapter.

(5) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with Section 701.11(d), and the applicable performance standards of Subchapter B or K of this chapter.

(7) The applicant has paid all reclamation fees from previous and existing operations as required by Subchapter R of this chapter.

(8) The applicant has satisfied the applicable requirements of Part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Section 816.111(d) or 817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 *(16 U.S.C. 1531* et seq.).

(11) Surface coal mining and reclamation operations will not adversely affect a private family burial ground. Adversely affecting a private family burial ground shall not include relocation authorized by applicable State law or regulations.

(d) Performance bond submittal. If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter J of this chapter.

SECTION 773.17 - PERMIT CONDITIONS.

Each permit issued by the regulatory authority shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter J of this chapter.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the State regulatory authority to --

(1) Have the right of entry provided for in Sections 842.13 and 840.12 of this chapter; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Parts 840 and 842, when the inspection is in response to an alleged violation reported to the regulatory authority by the private person.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition or the permit, including, but not limited to --

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(f) As applicable, the permittee shall comply with Section 701.11(d) and Subchapter B or K of this chapter for compliance, modification, or abandonment of existing structures.

SECTION 773.19 - PERMIT ISSUANCE AND RIGHT OF RENEWAL.

(a) Decision . If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with Subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (b) of this section.

(b) Notification . The regulatory authority shall issue written notification of the decision to the following persons and entities:

(1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.

(2) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.

(3) If the regulatory authority is a State agency, the local OSM office.

(c) Permit term . Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of Section 778.17 of this chapter are met.

(d) Right of renewal . Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with Section 774.15.

(e) Initiation of operations.

(1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The regulatory authority may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if --

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the regulatory authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the regulatory authority.

6. Part 774 is added to read as follows:

PART 774 -- REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

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

SECTION 774.1 - SCOPE AND PURPOSE.

This part provides requirements for revision; renewal; and transfer, assignment, or sale of permit rights.

SECTION 774.10 - INFORMATION COLLECTION.

The information collection requirements contained in Part 774 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0041. The information is being collected and the recordkeeping is required to meet the provisions of sections 506, 507, 508, 510, 511, 513, 514, 515, and 516 of the Act which provide for submission of all relevant information needed for evaluating the applications for permit action. The obligation to respond is mandatory.

SECTION 774.11 - REGULATORY AUTHORITY REVIEW OF PERMITS.

(a) The regulatory authority shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:

(1) Permits with a term longer than 5 years shall be reviewed no less frequently than the permit midterm or every 5 years, whichever is more frequent.

(2) Permits with variances granted in accordance with Section 785.14 of this chapter (mountaintop removal) and Section 785.18 of this chapter (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) of this chapter shall be reviewed no later than 3 years from the date of issuance of the permit unless, for variances issued in accordance with Section 785.14 of this chapter, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.

(3) Permits containing experimental practices issued in accordance with Section 785.13 of this chapter and permits with a variance from approximate original contour requirements in accordance with Section 785.16 shall be reviewed as set forth in the permit or at least every 2 ½ years from the date of issuance as required by the regulatory authority, in accordance with Sections 785.13(g) and 785.16(c) of this chapter, respectively.

(b) After the review required by Paragraph (a) of this section, or at any time, the regulatory authority may, by order, require reasonable revision of a permit in accordance with Section 774.13 to ensure compliance with the Act and the regulatory program.

(c) Any order of the regulatory authority requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in Part 775 of this chapter. Copies of the order shall be sent to the permittee.

(d) Permits may be suspended or revoked in accordance with Subchapter L of this chapter.

SECTION 774.13 - PERMIT REVISIONS.

(a) General. During the term of a permit, the permittee may submit an application to the regulatory authority for a revision of the permit.

(b) Application requirements and procedures. the regulatory authority shall establish --

(1) A time period within which the regulatory authority will approve or disapprove an application for a permit revision; and

(2) Guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of this subchapter, including notice, public participation, and notice of decision requirements of Sections 773.13, 773.19(b) (1) and (3), and 778.21, shall apply. Such requirements and procedures shall apply at a minimum to all significant permit revisions.

(c) Criteria for approval. No application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

(d) Request to change permit boundary. Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

SECTION 774.15 - PERMIT RENEWALS.

(a) General. A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.
(b) Application requirements and procedures.

(1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum --

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(ii) Evidence that a liability insurance policy or adequate self-insurance under Section 800.60 of this chapter will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to Subchapter J of this chapter;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by Section 778.21 of this chapter; and

(v) Additional revised or updated information required by the regulatory authority.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in Sections 773.13 and 773.19(b) of this chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of Section 774.13

(c) Approval process.

(1) Criteria for approval. The regulatory authority shall approve a complete and accurate application for permit renewal, unless it finds, in writing that --

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;

(iii) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the Act and the regulatory program on existing permit areas;

(iv) The operator has not provided evidence of having liability insurance or self-insurance as required in Section 800.60 of this chapter;

(v) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the regulatory authority might require pursuant to Subchapter J of this chapter; or

(vi) Additional revised or updated information required by the regulatory authority has not been provided by the applicant.

(2) Burden of proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(3) Alluvial valley floor variance. If the surface coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and Section 785.19 of this chapter, because the permittee complied with the exceptions in the proviso to section 510(b)(5) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit shall not be subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and Section 785.19 of this chapter.

(d) Renewal term. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 773.19.

(e) Notice of decision. The regulatory authority shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM if OSM is not the regulatory authority.

(f) Administrative and judicial review. Any person having an interest which is or may be adversely affected by the decision of the regulatory authority shall have the right to administrative and judicial review set forth in Part 775 of this chapter.

SECTION 774.17 - TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS.

(a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority.

(b) Application requirements. An applicant for approval of the transfer, assignment, or sale of permit rights shall --

(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including --

(i) The name and address of the existing permittee and permit number or other identifier;

(ii) A brief description of the proposed action requiring approval; and

(iii) The legal, financial, compliance, and related information required by Part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under Subchapter J of this chapter.

(c) Public participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) Criteria for approval. The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor –

(1) Is eligible to receive a permit in accordance with Section 773.15 (b) and (c) of this chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by Subchapter J of this chapter; and

(3) Meets any other requirements specified by the regulatory authority.

(e) Notification.

(1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.

(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) Continued operation under existing permit. The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

7. Part 775 is added to read as follows:

PART 775 -- ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

Section

Authority: Pub. L. *30 U.S.C. 1201* et seq.

SECTION 775.1 - SCOPE AND PURPOSE.

This part provides requirements for administrative and judicial review of decisions on permits.

SECTION 775.11 - ADMINISTRATIVE REVIEW.

(a) General. Within 30 days after an applicant or permittee is notified of the decision of the regulatory authority concerning an application for approval of exploration required under Part 772 of this chapter, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this section.

(b) Administrative hearings under State programs.

(1) The regulatory authority shall start the administrative hearing within 30 days of such request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under Section 773.13(c) shall either preside at the hearing or participate in the decision following the hearing or administrative appeal.

(2) The regulatory authority may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if --

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(iii) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the regulatory authority except that continuation under an existing permit may be allowed where the operation has a valid permit issued under Section 510 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority.

(c) Administrative hearings under Federal programs and Federal lands programs. All hearings, under a Federal program for a State or a Federal lands program except as may be modified by a cooperative agreement pursuant to Part 745 of this chapter, on an application for approval of exploration, a permit for surface coal mining and reclamation operations, permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights shall be of record and governed by *5 U.S.C. 554* and 43 CFR Part 4.

SECTION 775.13 - JUDICIAL REVIEW.

(a) General. Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in paragraph (b) or (c) of this section if --

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to Section 775.11 of this chapter; or

(2) Either the regulatory authority or the hearing authority for administrative review under Section 775.11 of this chapter fails to act within applicable time limits specified in the Act, this chapter, or the regulatory program.

(b) Judicial review under State programs. The action of the hearing authority identified in Paragraph (a) of this section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Act.

(c) Judicial review under Federal programs and Federal lands programs. The action of the hearing authority identified in Paragraph (a) of this section is subject to judicial review by the U.S. District Court for the district where the coal exploration or surface coal mining and reclamation operation is or would be located, except for judicial review of State regulatory authority actions in a State court of competent jurisdiction as may be provided for in a cooperative agreement, in the time and manner provided for in section 526 (a)(2), (b) and (e) of the Act. The availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Act.

8. Part 777 is added to read as follows:

PART 777 -- GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

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

SECTION 777.1 - SCOPE.

This part provides minimum requirements concerning the general content for permit applications under a State or Federal program.

SECTION 777.10 - INFORMATION COLLECTION.

The information collection requirements contained in Part 777 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0032. The information is being collected to meet the requirements of section 507, 508, and 510(b) of the Act. It provides general requirements for permit application format and contents. The obligation to respond is mandatory.

SECTION 777.11 - FORMAT AND CONTENTS.

(a) An application shall --

(1) Contain current information, as required by this subchapter;

(2) Be clear and concise; and

(3) Be filed in the format required by the regulatory authority.

(b) If used in the application, referenced materials shall either be provided to the regulatory authority by the applicant or be readily available to the regulatory authority. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(c) Applications for permits; revisions; renewals; or transfers, sales or assignments of permit rights shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

SECTION 777.13 - REPORTING OF TECHNICAL DATA.

(a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

SECTION 777.14 - MAPS AND PLANS: GENERAL REQUIREMENTS.

(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent area shall clearly show the lands and waters within those areas and be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

(b) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations. At a minimum, distinctions shall be clearly shown among those portions of the life of operations in which surface coal mining operations occurred --

(1) Prior to August 3, 1977;

(2) After August 3, 1977, and prior to either --

(i) May 3, 1978; or

(ii) In the case of an applicant or operator which obtained a small operator's exemption in accordance with Section 710.12 of this chapter, January 1, 1979;

(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the applicable regulatory program;

(4) After the estimated date of issuance of a permit by the regulatory authority under the approved regulatory program.

SECTION 777.15 - COMPLETENESS.

An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum --

(a) For surface mining activities, the information required under Parts 778, 779, and 780 of this chapter, and, as applicable to the operation, Part 785 of this chapter; and

(b) For underground mining activities, the information required under Parts 778, 783, and 784 of this chapter, and, as applicable to the operation, Part 785 of this chapter.

SECTION 777.17 - PERMIT FEES.

An application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. The fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit.

9. Part 778 is revised to read as follows:

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

Section

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

SECTION 778.1 - SCOPE AND PURPOSE.

This part establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This part covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This part applies to any person who submits an application to a regulatory authority for a permit to conduct surface coal mining and reclamation operations.

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 numbers 1029-0034 and 1029-0037. The information is being collected to meet the requirements of sections 507(b), 508(a) and 510(c) of the Act, which require that persons conducting surface mining activities submit to the regulatory authority relevant information regarding ownership and control of the property to be affected by the activities, compliance status, and history. This information will be used by the regulatory authority to ensure 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. The obligation to respond is mandatory.

SECTION 778.13 - IDENTIFICATION OF INTERESTS.

An application shall contain the following:

(a) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(b) Names, addresses, and telephone numbers of the applicant, the operator (if different from the applicant), and the applicant's resident agent who will accept service of process.

(c) For applicants other than single proprietorships, where applicable --

(1) Name and address of each officer, partner, principal, principal shareholder, and director or other person performing a function similar to a director.

(2) All names under which the applicant, partner, or principal shareholder operates or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of application.

(d) A statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the 5 years preceding the date of the application by any person identified in Paragraph (c)(2) of this section. Such statement shall provide permit or application numbers or other identifiers and the identity of the regulatory authority for each operation listed.

(e) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(f) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(g) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(h) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this paragraph which is not on public file pursuant to State law shall be held in confidence by the regulatory authority, as provided under Section 773.13(d)(3)(ii) of this chapter.

SECTION 778.14 - VIOLATION INFORMATION.

An application shall contain the following:
(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has --

(1) Had a Federal or State coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond.

(b) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in Paragraphs (a) (1) and (2) of this section has occurred, including --

(1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) The current status of the proceedings.

(c) A list of all violation notices received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with any surface coal mining and reclamation operation during the 3-year period preceding the application date, for 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 application shall also contain the following information about each violation notice:

(1) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(2) A brief description of the violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in Paragraph (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation.

SECTION 778.15 - RIGHT-OF-ENTRY INFORMATION.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit --

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

SECTION 778.16 - STATUS OF UNSUITABILITY CLAIMS.

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under Parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in Section 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application in which the applicant proposes to conduct surface coal mining activities within 300 feet of an occupied dwelling or within 100 feet of a public road shall contain the necessary information and meet the requirements of Section 761.12 of this chapter.

SECTION 778.17 - PERMIT TERM.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall --

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

SECTION 778.18 - INSURANCE.

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with Section 800.60 of this chapter.

SECTION 778.21 - PROOF OF PUBLICATION.

A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by Section 773.13(a)(1) of this chapter.

SECTION 778.22 - FACILITIES OR STRUCTURES USED IN COMMON.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with Part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.

PART 782 -- [REMOVED]

10. Part 782 is removed.

PARTS 786, 787, AND 788 -- [REMOVED]

11. Parts 786, 787, and 788 are removed.

[Pub. L. 95-87, *30 U.S.C. 1201* et seq .]

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