FEDERAL REGISTER: 48 FR 6912 (February 16, 1983)

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

30 CFR Parts 700, 701, 740, 741, 742, 743, 744, 745 and 746
Federal Lands Program

ACTION: Final rules.

SUMMARY: The Office of Surface Mining (OSM) is amending its rules governing the Federal lands program which set forth the requirements for surface coal mining and reclamation operations on Federal lands. The final rules will more clearly delineate the roles of the Federal government and the States in the regulation of surface coal mining and reclamation operations on Federal lands. Under the final rules, States will be able to assume greater responsibility for administering the requirements of the Surface Mining Control and Reclamation Act of 1977 on Federal lands. The final rules provide a revised process for review and approval of mining plans by the Secretary, and require mining plan approval only where leased Federal coal is involved.

EFFECTIVE DATE: March 18, 1983.

FOR FURTHER INFORMATION CONTACT: H. Leonard Richeson, Federal Lands Specialist, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 343-5866.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Section 523(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), *30 U.S.C. 1201,* et seq., requires the Secretary to promulgate and implement a Federal lands program applicable to all surface coal mining and reclamation operations taking place pursuant to Federal law on Federal lands. Section 523(a) also provides that the Federal lands program must (1) incorporate all of the requirements of the Act, (2) incorporate, at a minimum, the requirements of a State program in a State with a State program approved pursuant to section 503 of the Act, and (3) consider the diverse physical, climatological and other unique characteristics of the Federal lands in question. Under section 523(c) of the Act, a State with an approved State program may enter into a cooperative agreement with the Secretary under which the State would assume responsibility for regulation of surface coal mining and reclamation operations on Federal lands within the State. Sections 523(a) and 523(c) of the Act provide, however, that the Secretary may not delegate to the State, among other things, his responsibilities to approve mining plans on Federal lands and to designate Federal lands unsuitable for surface coal mining pursuant to section 522 of the Act.

The Secretary implemented the initial phase of the Federal lands program by promulgating 30 CFR Chapter VII, Subchapter B, Parts 710-725, *(42 FR 6277,* December 13, 1977) and by adopting amendments to 30 CFR Part 211 *(43 FR 37181,* August 22, 1978) to incorporate the requirements of sections 502 and 523 of the Act. On March 13, 1979, the Secretary promulgated the permanent phase of the Federal lands program, 30 CFR Chapter VII, Subchapter D. *44 FR 15332-15341.* On December 31, 1979, in response to a petition by the State of Montana, OSM postponed the effective date of the permanent phase of the Federal lands program until the date of approval of a State program or implementation of a Federal program for a State. *44 FR 7740.*

Pursuant to Executive Order 12291, every Federal agency is required, within applicable statutory constraints, to choose regulatory goals that maximize benefits to society and to select the most efficient and effective means to achieve these goals. In addition, one of the Secretary's goals is to eliminate rules which are excessive, burdensome or counterproductive. To accomplish this regulatory reform and to assure that the Executive Order is carried out with

respect to regulations governing surface coal mining and reclamation operations on Federal lands, OSM published on June 9, 1982, proposed rules to amend 30 CFR Chapter VII, Subchapter D, the Federal Lands Program. *47 FR 25092*.

OSM has sought to provide early and meaningful public participation during its regulatory review. To this end, OSM has met with and/or received comments and recommendations from the public, representatives of coal mining States that have or will have surface coal mining on Federal lands, industry and environmental organizations. Comments were initially invited for 30 days ending on July 9, 1982. The comment period was extended for 14 additional days ending on July 23, 1982, to provide more time for commenters who indicated that additional time was needed to adequately review and comment on the proposed rules. *47 FR 28706* (July 1, 1982). The comment period was reopened on August 2, 1982, for 14 days ending on August 16, 1982, because several commenters requested that they be given an opportunity to review and comment on those provisions of the proposed rules that interrelated with the final revised 30 CFR Part 211 rules published by the Department on July 30, 1982. See *47 FR 33714*.

All substantive comments were carefully considered in the rulemaking process. These comments are addressed in the following preamble. Two hearings were scheduled to receive testimony on the proposed rules. However, as provided in the proposed rules, both were canceled because no persons indicated an intention to testify at either public hearing by 5 days before the appropriate hearing date.

All comments received as well as summaries of meetings held are available for inspection in the Administrative Record (R&I -- 04), Room 5315, 1100 L Street, NW., Washington, D.C.

II. DISCUSSION AND DISPOSITION OF COMMENTS AND RULES ADOPTED

A. GENERAL COMMENTS

In OSM's proposed rules, several conceptual changes to the Federal lands program were discussed. One change provided that upon either approval of a State program or implementation of a Federal program for a State, certain requirements of that program would become applicable to mining on Federal lands within that State.

A second change concerned the review and approval of SMCRA permits. States with cooperative agreements approved pursuant to section 523(c) of the Act would independently review and issue SMCRA permits; the previous regulations required concurrent review and approval of permits by OSM and the State. "Permit" would be redefined, for Federal lands, to mean the permit approved by the regulatory authority instead of the Secretary to reflect this change. This responds to one commenter who opposed OSM's revision of the definition of "permit" under revised Section 701.5. This is further discussed below under "Permit Application and Mining Plan Review and Approval."

A third change concerned the definition of mining plan. "Mining plan" would mean the plan for mining leased Federal coal required by the Mineral Leasing Act (MLA). The current regulations define "mining plan" as the plan complying with the requirements of SMCRA and other applicable laws and regulations, as well as the MLA.

Finally, the requirement for a mining plan would apply only to those surface coal mining and reclamation operations on lands containing leased Federal coal, since the mining plan is an exclusive requirement of the Mineral Leasing Act, which applies only to minerals owned and leased by the United States.

OSM received numerous comments on these major conceptual changes and on the corresponding sections of the proposed rules. Comments on these conceptual changes will be addressed before discussion of comments on other, more specific changes in the rules.

1. APPLICABILITY OF STATE AND FEDERAL PROGRAMS ON FEDERAL LANDS. As stated in the proposed rules, Section 740.11(a) makes each approved State program or Federal program for a State applicable to (1) coal exploration operations on lands not subject to 30 CFR Part 211 and (2) surface coal mining and reclamation operations on Federal lands within the State, except for specific provisions in the State or Federal program that are inappropriate for Federal lands.

One commenter argued that the statement in the preamble to the proposed rules that these regulations would "foster uniform regulation of mining on Federal lands within a State" is "facially inconsistent" with an earlier preamble

statement that "Congress intended that the Federal lands program would not be uniform for all Federal lands, but would instead be tailored to the specific conditions on different Federal lands within a State." The commenter believed that the Federal lands program should allow for variations among conditions on Federal lands within a given State.

OSM's statement that these regulations would "foster uniform regulation of mining on Federal lands" was intended only to point out that the proposed revisions to Subchapter D would generally apply the standards and procedural requirements of the applicable regulatory program to surface coal mining and reclamation operations on both Federal and non-Federal lands within that State. To the extent that a particular regulatory program does provide different performance standards or other requirements for different geographical areas within a State, the revised Federal lands program ensures that such provisions are made applicable both on and off non-Federal lands within the State. The "uniformity" to which the preamble referred was intended to mean that Federal and non-Federal lands within a given State ought not be subject to different standards simply as a consequence of their differing ownership.

OSM stated in the preamble to the proposed rules that the Federal lands program currently required operators to comply with the requirements of 30 CFR Chapter VII, rather than with the applicable State or Federal program. One commenter stated that since the Federal lands program is required by section 523(a) of the Act to include the requirements of the approved State program, this statement was confusing and inconsistent with the law, as it implied that operators had to comply only with 30 CFR Chapter VII and not the approved State program.

OSM did not intend to create the impression that, under previous regulations, there were circumstances in which appropriate State program requirements would not apply on Federal lands; in fact, previous 30 CFR Chapter VII provided for inclusion of State program requirements in the Federal lands program through cooperative agreements. See Previous 30 CFR 745.12(a). Absent a cooperative agreement, previous regulations required operators to comply with the requirements of 30 CFR Subchapter K (OSM's permanent program performance standards), rather than with the substantive and procedural requirements of the State regulatory program. See previous 30 CFR 744.12(a). In contrast, the revised rules provide that standards of the applicable State or Federal program apply whether or not a cooperative agreement is in place. See revised 30 CFR 740.19(a).

2. PERMIT APPLICATION AND MINING PLAN REVIEW AND APPROVAL. Several commenters questioned the basis for OSM's proposed definitions of "mining plan" and "permit application package" and for the proposed changes in the procedures for review and approval of permit applications and mining plans. OSM proposed to separate permit approval from mining plan approval by providing that States with cooperative agreements would independently review and approve SMCRA permits, while the Secretary would retain responsibility for approval of mining plans as required under the Mineral Leasing Act and section 523(c) of SMCRA. See *47 FR 25092* (June 9, 1982).

OSM believes that separating the requirement for approval of permits from that for approval of mining plans is consistent with the Mineral Leasing Act, as well as with the intent of Congress under SMCRA that "the primary governmental responsibility for [regulating] surface mining and reclamation operations subject to this Act should rest with the States." SMCRA section 101(f).

Previous 30 CFR 740.5 defined "mining plan" to include, among other things, both the mining and reclamation plan required under the Mineral Leasing Act and the permit application required under the Act. See also previous 30 CFR 741.12. Since section 523(c) of the Act prohibits the Secretary from delegating his responsibility to approve mining plans, and since previous OSM regulations defined mining plans to include permit applications, the previous regulations tended to promote duplicative actions between the State regulatory authority and OSM. This duplication is inconsistent with the Act's intent that the primary governmental responsibility rest with the States.

The principal change accomplished by the revised regulations is that the term "mining plan" has been redefined to exclude the SMCRA permit application in order to allow States with section 523(c) cooperative agreements to assume a largely independent role in the review and approval of permit applications filed under sections 506, 507 and 508 of the Act. Accordingly, States will have clear authorization under cooperative agreements to assume the responsibility for issuing permits under the Act. See revised Section 740.4(c)(1).

The revised regulations define a new term, "permit application package," that describes the materials that an operator seeking to conduct surface coal mining and reclamation operations on Federal land must file. As defined in revised section 740.5, the permit application package includes all information required to be filed by SMCRA (including the SMCRA permit application), 30 CFR Chapter VII, Subchapter D, the applicable State or Federal program, any applicable cooperative agreement, and all other applicable laws and regulations, including, with respect to leased Federal coal, the Mineral Leasing Act and its implementing regulations.

Where there is leased Federal coal, the operator will be required to file a resource recovery and protection plan (RRPP) within three years of leasing, even if the operator is not yet prepared to file a complete permit application package. See discussion of "Resource Recovery and Protection Plans" in the final revisions to 30 CFR Part 211. *47 FR 33154* (July 30, 1982). As noted in the discussion of those rules, where the operator is prepared to submit the complete permit application package by the three-year deadline, the permit application package will be submitted to the regulatory authority. Otherwise, an RRPP prepared only to meet the three-year deadline will be submitted to the Bureau of Land Management (BLM), while the complete permit application package, including any necessary supplements to the RRPP, will be filed with the regulatory authority when ready.

Prior to approval of a cooperative agreement, the permit application package will be submitted to OSM, since OSM is the regulatory authority on Federal lands in such circumstances. OSM will have lead responsibility for reviewing the package, consulting with other Federal agencies with respect to their responsibilities and ensuring compliance with applicable Federal laws, regulations and orders not otherwise covered under the SMCRA review. BLM will review the RRPP and provide OSM with its recommendation that the Secretary approve, conditionally approve or disapprove the RRPP. OSM will prepare a decision document for the Secretary that recommends approval, conditional approval or disapproval of the mining plan.

Where a cooperative agreement is in place, the permit application package will be submitted to OSM and the State. The State will then assume the lead role in the review of the package, which (at the State's option) may or may not include ensuring consultation with involved Federal agencies, including OSM. Where the State has elected not to coordinate the required consultation among Federal agencies, OSM would ensure that affected Federal agencies were consulted and necessary comments or concurrences received. In particular, the State will be responsible for review and approval of the SMCRA permit application. OSM will continue to be responsible for ensuring compliance with other applicable Federal laws, regulations and orders not otherwise covered under the SMCRA review. Following review of the permit application package and receipt of, among other things, the findings and recommendations of the State on the permit application and of BLM on the RRPP, OSM will prepare a decision document to assist the Secretary in approving the mining plan. The State could issue the SMCRA permit following completion of its review of the permit application, although actual commencement of mining would have to await Secretarial approval of the mining plan.

Where there is no leased Federal coal and where OSM is the regulatory authority, the operator will still submit a permit application package. The package need not, however, include RRPP materials not otherwise required under SMCRA, because the Mineral Leasing Act does not apply in the absence of leased Federal coal. OSM will still have the lead responsibility for review where there is no cooperative agreement. Since no Secretarial approval of a mining plan will be involved, mining could commence once consultation had been completed with the Federal land management agency and the permit application had been reviewed and approved by OSM or, as applicable, the State.

One commenter stated that the permit application package concept confused matters by requiring the combination in one document of logically and legally separate documents, primarily the RRPP required by the Mineral Leasing Act and the permit application required by SMCRA. The commenter suggested deletion of the term "permit application package."

OSM has declined to accept this suggestion because it is necessary to define for potential operators the entire package of materials that a person desiring to mine coal on Federal lands must submit. This definition does not confuse either the components of the permit application package or the discrete review, concurrence and approval responsibilities of, among others, States, BLM, OSM and the Secretary. It merely defines what a potential operator must submit. The SMCRA permit application and the mining plan, as described earlier, will be approved or disapproved by the regulatory authority and the Secretary, respectively.

Another commenter suggested that mining plans should be required for any proposal to mine coal on Federal lands, not just for proposals to mine leased Federal coal. This commenter averred that OSM's position is inconsistent with section 523(a) of SMCRA, which requires the Secretary to implement SMCRA's requirements on Federal lands, and with OSM's position that certain non-delegable Secretarial responsibilities (such as for designating Federal lands unsuitable for mining) will remain whether or not leased Federal coal is present.

OSM disagrees with these comments. As discussed at length in the preamble to the proposed rules *(47 FR 25097,* June 9, 1982), the reference to "mining plan" in section 523(c) of SMCRA is a reference to the plan for mining leased Federal coal under the Mineral Leasing Act. There is no basis for requiring mining plans for proposals to mine other than leased Federal coal. OSM's position is fully consistent with SMCRA section 523(a), for that section cannot be read to expand the applicability of the Mineral Leasing Act mining plan requirement. *30 U.S.C. 1292*(a)(8). Nor does OSM's position conflict with the express requirement of the Act that the Secretary retain responsibility for designating Federal lands unsuitable, since that responsibility, unlike his mining plan approval responsibility, extends to all Federal lands.

Several commenters requested that OSM clarify that the mining plan and the RRPP are congruent. Some of these commenters asserted that the mining plan referred to in section 523(c) of SMCRA pertains only to the production or operation requirements of the Mineral Leasing Act and not as well to the reclamation requirements of section 7(c) of the Mineral Leasing Act.

OSM has rejected these comments. First, the mining plan referred to in section 523(c) is composed of, among other things, the "operation and reclamation plan" required by section 7(c) of the Mineral Leasing Act. See preamble to final revised 30 CFR Part 211 *(47 FR 33166,* July 30, 1982) and preamble to the proposed revised Federal lands rules *(47 FR 25097,* June 9, 1982). The mining plan, therefore, does have a reclamation aspect. OSM believes that this aspect of the Secretary's mining plan approval is satisfied through BLM's review of the reclamation schedule required in the RRPP, and as supplemented by OSM and Federal land management agency actions. See preamble to proposed revised Federal lands rules *(47 FR 25097,* June 9, 1982). Mining plan approval is thus not precisely equivalent to approval of the RRPP.

One person commented that an operator who is ready to submit both the RRPP and the permit application package should not be required to submit these separately if both are ready by three years after leasing.

OSM agrees. The permit application package is the entire submission by an operator desiring to mine on Federal lands. If the full permit application package is ready by the three-year deadline, then that package, which will include the RRPP, is all that the operator submits. Only if the full permit application package is not ready by the three-year deadline would separate submissions be made. The operator, in that case, would submit the RRPP by the three-year deadline and submit the permit application package, supplementing the RRPP as necessary, when the complete package is ready.

Other commenters recommended that the final rules not require submission of permit application packages to both the State regulatory authority and OSM when a cooperative agreement is in place, because the State, and not OSM, should review SMCRA permit applications. These commenters also urged that the Secretary's review of permit applications in such situations be limited to receiving the State's findings on permit applications.

These comments are based on a misconception of how permit application packages will be reviewed when cooperative agreements are in place. OSM will receive copies of permit application packages, which include permit applications, not to review the applications for compliance with SMCRA, but to facilitate OSM's role in compliance with applicable laws not otherwise covered in the SMCRA review. The State will have the sole responsibility for reviewing permit applications for SMCRA compliance. In addition, both the proposed and final rules provide that the Secretary's decision on mining plan approval will be based on, among other things, the State's findings on the permit application. See revised 30 CFR 746.13(f).

Several commenters stated that OSM should not sever permit applications from mining plans, because mining plan approvals must be consistent with approved permits.

OSM believes that the revised regulations provide for consistency between the approved SMCRA permit and the approved mining plan. Because mining may not commence prior to Secretarial approval of the mining plan, even if the SMCRA permit has already been issued, the Secretary will have the opportunity, prior to any mining being conducted, to ensure that the mining plan and permit are consistent. Where there are inconsistencies, the Secretary reserves the right to require the operator to comply with any additional conditions or requirements of the approved mining plan.

These commenters also believe that the Secretary may not discharge the reclamation aspect of his mining plan approval responsibility as proposed (See *47 FR 25097*, June 9, 1982), and must instead rely on OSM review of each permit application for compliance with SMCRA.

OSM disagrees with these commenters' assertions. Neither section 201(b) nor section 523(c) of SMCRA requires this OSM role. Section 201(b) is silent on whether or not OSM must perform particular SMCRA functions. Section 523(c) was discussed earlier. OSM also is certain that the documentation of the SMCRA review and the various oversight processes will be more than adequate to apprise the Secretary of pertinent reclamation information.

Several commenters averred that, when a cooperative agreement is in force, it is State approval of the permit, rather than Secretarial approval of the mining plan, that authorizes mining. These commenters therefore concluded that in such circumstances there is not a Federal action within the meaning of NEPA.

OSM has not accepted the position of these commenters that there is no continuing Federal NEPA responsibility. However, OSM will study the issue of NEPA compliance within the context of SMCRA permit application review and MLA mining plan review. OSM will publish further information on NEPA compliance procedures following this study.

B. SPECIFIC REVISIONS

All references in the previous rules to the terms "Regional Director" and "Regional Office" have been replaced in the revised rules with references to "OSM," to conform to the September 13, 1981, reorganization of OSM which abolished OSM's regional structure. All references to "Director" used to describe the head of OSM and to other Federal agencies have been replaced with references to "OSM" or the specific name of the Federal agency, as appropriate, for simplicity.

PART 700 -- GENERAL

SECTION 700.1 - SCOPE.

Previous Section 700.1(d) provided a general description of the applicability of Subchapter D to Federal lands and stated that Subchapter D incorporates by reference the requirements of various other subchapters of Chapter VII, including the permit requirements of Subchapter G, the performance bond and insurance requirements of Subchapter J, the performance standards of Subchapter K, the inspection and enforcement requirements of Subchapter L and the blaster certification requirements of Subchapter M. With the exception of Subchapter L, reference to other subchapters that are incorporated by reference into Subchapter D has been removed, as proposed, and replaced with the phrase "applicable regulatory program." Thus, the rules explicitly incorporate into the Federal lands program the requirements of a State program or Federal program implemented for a State. Section 700.1 will continue to state that Subchapter D incorporates the requirements of Subchapter L, to make clear that the inspection, enforcement and civil penalty requirements of Subchapter L continue to apply where OSM is the regulatory authority on Federal lands that are subject to the requirements of Subchapter D. Where the State is the regulatory authority under a cooperative agreement, the State will apply its State program requirements to inspection, enforcement and civil penalties on lands subject to the requirements of Subchapter D, while OSM will apply the requirements of Subchapter L in its oversight capacity. See revised Section 740.17.

SECTION 700.5 - DEFINITIONS.

The definition of the term "regulatory program" has been revised to include, under certain circumstances, the requirements of subchapters A, F, G, J, K, L, M, and P of Chapter VII, in addition to a State or Federal program. The

requirements of subchapters A, F, G, J, K, L, M, and P of Chapter VII become the regulatory program where no State program under section 503 of SMCRA or Federal program under section 504 of SMCRA has been approved and where there is coal exploration or surface coal mining and reclamation operations on Federal lands in a State. Defining "regulatory program" in this manner ensures that the permanent program requirements of the Act apply on federal lands in those States that do not have approved State or Federal programs that could be used to implement these requirements.

SECTION 700.11 - APPLICABILITY.

Previous Section 700.11(g) provided that coal exploration on Federal lands outside the permit area would not be governed by Chapter VII. this provision has been revised by replacing the phrase "Federal lands outside a permit area" with the phrase "Federal lands that are subject to the requirements of 30 CFR Part 211." Thus, revised Section 700.11(g) eliminates any overlap between the coal exploration requirements of Chapter VII and 30 CFR Part 211 by excluding from the requirements of Chapter VII, regulation of exploration operations on Federal lands that are subject to 30 CFR Part 211. Exploration operations which are subject to the requirements of Chapter VII include (1) lands containing leased Federal coal within a permit area, but only after the commencement of mining operations, (2) lands where the surface is owned by the United States and the coal is owned privately or by a State, or (3) lands owned by the Tennessee Valley Authority. Limiting the applicability of Chapter VII to coal exploration operations not subject to 30 CFR Part 211 will ensure that no duplication occurs between the requirements of Chapter VII and 30 CFR Part 211, while also ensuring that all exploration on Federal lands is subject to one of these regulatory schemes. The relationship between these revised rules and the regulations at 30 CFR Part 211 concerning exploration is further discussed below. See discussion of revised 30 CFR 740.11.

One commenter objected to proposed 30 CFR 700.11(g), which limits the applicability of 30 CFR Chapter VII, with respect to coal exploration, to lands not subject to 30 CFR Part 211.

OSM believes this revision is necessary for several reasons. Section 512(e) of the Act provides that section 4 of the Federal Coal Leasing Amendments Act of 1975 (FCLAA) shall govern coal exploration operations on Federal lands. Section 4 of the FCLAA, however, does not apply to lands without Federal coal. In recognition that Congress intended that Federal standards would apply to coal exploration on Federal lands not subject to section 4 of the FCLAA, the previous regulations applied OSM's exploration rules to exploration taking place within a permit area on Federal lands. See discussion at *44 FR 14972-14973* (March 13, 1979). The applicability of the revised 30 CFR Part 211 exploration standards differs from that of old 30 CFR Part 211 in that it is extended to exploration within an approved permit area on leased Federal coal, but only prior to commencement of mining operations. See *47 FR 33154* (July 30, 1982). Thus, with respect to leased lands, revised 30 CFR 700.11(g) differs in effect from the previous rule by commencing the applicability of 30 CFR Chapter VII to coal exploration with actual commencement of surface coal mining operations, rather than with approval of a permit. Revised Section 700.11(g) will also apply 30 CFR Chapter VII to exploration on Federal lands that do not have Federal coal whether or not a permit has been issued. Previous 30 CFR 700.11(g) provided that the SMCRA exploration standards do not apply until the SMCRA permit is issued even on lands with no leased Federal coal. Exploration on such Federal lands prior to permit approval was therefore apparently not subject to the standards of either SMCRA or section 4 of the FCLAA. The revised rule eliminates this apparent gap by providing for a dovetailing of the applicability of the 30 CFR Chapter VII and 30 CFR Part 211 exploration standards.

This commenter was also concerned with the standards that would apply to exploration under 30 CFR Part 211.

Where BLM has the primary responsibility for exploration on Federal lands, it will apply the applicable exploration provisions of OSM's permanent program (30 CFR Part 815) or, where it is in effect, the approved State or Federal program. Thus, the requirements of section 512 of SMCRA will continue to be applicable either under 30 CFR Part 211 or under 30 CFR Chapter VII.

This commenter also found no statutory basis for the Secretary to exempt lands owned by the United States and entrusted to or managed by the Tennessee Valley Authority (TVA lands) from the requirements of Chapter VII, stating

that section 701(4) of the Act exempts TVA lands only from section 714 (surface owner protection) and section 715 (Federal lessee protection) of the Act.

OSM agrees with this comment. Revised Section 700.11(g) will not have the effect of exempting TVA lands from Chapter VII. Since TVA lands are not covered by 30 CFR Part 211, surface coal mining and reclamation operations on such Federal lands must be regulated by 30 CFR Chapter VII (subject, of course, to the exemptions provided under section 701(4) of the Act).

PART 701 -- PERMANENT REGULATORY PROGRAM

Part 701 of Subchapter A has been revised to conform to revisions to Subchapter D as follows:

SECTION 701.5 - DEFINITIONS.

The second sentence of the previous definition of the term "permit" provided that, for purposes of the Federal lands program, permit meant the document issued authorizing surface coal mining and reclamation operations on Federal lands after approval of a mining plan by the Secretary and, where a cooperative agreement has been approved, by the State regulatory authority. As proposed, the revised definition of permit provided that a permit may be issued by the State regulatory authority under a cooperative agreement or OSM where there is no cooperative agreement.

One commenter opposed redefining the permit in this manner, stating that allowing States to issue permits is inconsistent with the intent and clear language of SMCRA.

This comment was rejected for the reasons discussed above under "General Comments" and "Permit Application and Mining Plan Review and Approval."

SECTION 701.11 - APPLICABILITY.

The citation in previous Section 701.11(b) to 30 CFR Part 741.11(c), with respect to conditions which enable operations on Federal lands to continue past eight months from the date of approval of a State program or implementation of a Federal program has been changed, as proposed, to 30 CFR 740.13(a)(3) to reflect the corresponding revisions in Subchapter D.

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

As proposed, Subchapter D has been restructured as follows: (a) Part 740 contains the permitting, bonding, inspection, enforcement, civil penalty and performance standard provisions of previous Parts 741, 742, 743 and 744, respectively. Part 740 incorporates and supplements the permitting, bonding, inspection, enforcement, civil penalty and performance standard requirements of the applicable State or Federal program. The inspection, enforcement and civil penalty provisions in Part 740 apply the requirements of 30 CFR Parts 842, 843 and 845 to inspection, enforcement, civil penalty and related activities that are conducted by OSM and the Department with respect to mining on Federal lands; (b) Part 745 provides for State-Federal cooperative agreements under which a State may assume responsibility for regulation of surface coal mining and reclamation operations on all Federal lands within the State; and (c) new Part 746 sets forth the requirements for review and approval of mining plans for surface coal mining and reclamation operations on lands containing leased Federal coal.

Subchapter D is being published here in its entirety for continuity and the convenience of the reader.

SECTION 740.1 - SCOPE AND PURPOSE.

Previous section 740.1 has been revised, as proposed, to eliminate the unnecessary listing in current 30 CFR 740.1 of the areas covered by Subchapter D and to instead provide a more general introductory statement specifying that Subchapter D governs surface coal mining and reclamation operations on Federal lands.

PREVIOUS SECTION 740.2 has been removed, as proposed.

SECTION 740.4 - RESPONSIBILITIES.

As proposed, revised Section 740.4 describes the responsibilities of the Secretary, various Federal agencies and the States for regulating surface coal mining and reclamation operations on Federal lands under SMCRA, the Mineral Leasing Act and other applicable Federal laws, regulations and executive orders. Revised Section 740.4 describes in particular those responsibilities that may be delegated to a State under a cooperative agreement and those responsibilities that may not be so delegated.

Revised Section 740.4(a) incorporates with some revision the requirements of previous 30 CFR 740.4(a) through (c). The only significant change is incorporated in revised Section 740.4(a)(1), which corresponds to previous 30 CFR 740.4(a) and requires Secretarial approval of mining plans only for leased Federal coal. Revised Section 740.5 defines mining plan accordingly. These depart from the previous regulations, which required Secretarial approval of mining plans without regard to whether or not the lands contained leased Federal coal. See previous 30 CFR 740.4(a) and 745.13(i).

One commenter opposed the revision of Section 740.4(a) to require Secretarial approval of mining plans only for leased Federal coal because the commenter saw no basis in the Act for so limiting the Secretary's authority on Federal lands. The same commenter interpreted OSM's use of the term "leased Federal coal" under revised Section 740.4(a) as a change in the definition of Federal lands in section 701(4) of the Act.

As stated in the proposed rules, OSM believes its interpretation of section 523 of the Act is consistent with the requirements of both the Act and the Mineral Leasing Act. Section 523(c) of the Act provides that "nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands * * *" The context in which this provision was drafted and its relevant history indicate that this is a reference to the requirements of the Mineral Leasing Act, which, with respect to coal, applies only to Federally-owned coal. See discussion above of revised definition of "mining plan" under "Permit Application and Mining Plan Review and Approval." Secretarial approval of mining plans is required only in circumstances involving the production of Federal coal. Accordingly, mining plan approval will not be required for mining private coal, since such mining operations are not subject to the mining plan or other requirements of the Mineral Leasing Act or 30 CFR Part 211. The Secretary will retain, however, certain other non-delegable responsibilities with respect to mining on Federal lands whether or not they contain leased Federal coal. For instance, the Secretary will retain his responsibility to designate Federal lands as unsuitable for mining or to terminate such designations of all Federal lands.

Use of the phrase "leased Federal coal" to limit the requirement for mining plan approval does not alter in language or effect the definition of "Federal lands" in section 701(4) of the Act or 30 CFR 700.5. The phrase "leased Federal coal" simply clarifies that the Secretary's mining plan approval responsibility extends only to lands containing leased Federal coal. To avoid further misinterpretation, however, OSM has prefaced the phrase "leased Federal coal" with the phrase "lands containing" in revised 30 CFR 740.4(a)(1).

OSM has included in the final rule two new provisions under revised Section 740.4(a) and corresponding provisions under revised Section 745.13. The first set of changes adds new Sections 740.4(a)(4) and 745.13(o) which specify that the Secretary is responsible for determining valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under section 522(e) (1) or (2) of the Act. These areas include (1) lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress (section 522(e)(1) of the Act), and (2) lands within the boundaries of any national forest (section 522(e)(2) of the Act). Valid existing rights determinations on such areas are of such paramount national importance that this responsibility appropriately should not be delegated. Thus, the inclusion of new Section 740.4(a)(4) reflects the Secretary's continuing commitment to carry-out the Congressional mandate to protect these areas and to ensure that there will be no mining on Federal lands in national parks.

The second set of changes adds new Section 740.4(a)(5) and 745.13(p). These provisions recognize that under section 522(e)(2) of the Act, it is the Secretary's responsibility to determine that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations on any Federal lands within the boundaries of any national forest. Therefore, these determinations must be reserved to the Secretary and may not be delegated to States.

In this regard, OSM notes that determinations or valid existing rights and of compatibility which are reserved to the Secretary should be performed independently of the permit review process. Under these final rules, the permit review process may be delegated to States under cooperative agreements. OSM expects in the near future to propose further changes to its Federal lands program to specify the procedures the Secretary will use in making such determinations on Federal lands.

As proposed, revised Section 740.4(b) specified those responsibilities that must remain with OSM even under a cooperative agreement. Revised Section 740.4(b)(1), which had no counterpart in the previous regulations, reserves to OSM responsibility for preparing and submitting to the Secretary a decision document that recommends approval, conditional approval or disapproval of all mining plans or mining plan modifications. OSM will be responsible for this function even in States with cooperative agreements.

Proposed Section 740.4(b)(2) would have required OSM to ensure compliance with applicable Federal laws and regulations other than SMCRA and its implementing regulations.

Several commenters stated that since a cooperative agreement delegates to the State regulatory authority permit application approval authority on Federal lands, and since permit application approval and not mining plan approval authorizes disturbance of lands by a surface mining operation, there is no Secretarial action that would trigger NEPA compliance requirements. Even though the Secretary must comply with other Federal laws, these commenters continued, the Secretary plays a role only by assuring himself that these "other Federal laws" have not been violated. The commenters believe that such assurance can be better accomplished by a scheme other than that of the proposed Federal lands program, which requires, a decision document for Secretarial approval of the mining plan. The commenters would have either the State, OSM or other affected Federal agencies provide the Secretary with information on compliance with other Federal laws. The Secretary would notify the State when he is satisfied that these other applicable Federal laws for which he has responsibility are not violated. The State would then issue the permit. Therefore, the commenters reasoned, the final action allowing mining would be the State's permit issuance, not the Secretary's mining plan approval and, thus, NEPA would not be triggered.

OSM has not accepted the position of the commenters that NEPA would not be triggered. However, OSM believes that the position of the commenters warrant further review. Therefore, OSM will further review the relationship between NEPA, the SMCRA permit application, and the Mineral Leasing Act mining plan, and whether or not NEPA compliance can be achieved through alternatives to present procedures. Such alternatives include, among others, (1) whether or not the SMCRA permit application review and approval can constitute a functional equivalent to the NEPA process or (2) whether NEPA compliance can be satisfied through actions taken by the Federal land management agency. In any case, proposed paragraph (b)(2) was confusing as written and has been deleted from the final rule. Subsequent sections of the final rule have been renumbered accordingly.

Revised Section 740.4(b)(2) continues the requirement of previous 30 CFR 740.4(e) that OSM be responsible for approving experimental practices on Federal lands.

Revised Section 740.4(b)(3), which corresponds to previous Section 740.4(g), reserves to OSM responsibility for overseeing State regulatory authority inspection, enforcement and civil penalty activities with respect to surface coal mining and reclamation operations on Federal lands. Revised section 740.4(c)(5), on the other hand, allows the State regulatory authority to assume responsibility for inspection, enforcement and civil penalty activities that would be the responsibility of OSM in the absence of a cooperative agreement. Thus, after a cooperative agreement is approved, the State will enforce its State program (including its own inspection, enforcement and penalty provisions) on Federal lands, while OSM will conduct necessary oversight inspection, enforcement and civil penalty activities pursuant to 30 CFR Parts 842, 843 and 845.

Under revised Section 740.4(b)(4), citizen requests for Federal inspections on Federal lands will be processed in accordance with 30 CFR Parts 842, 843 and 845, which include provisions for citizen involvement in the inspection, enforcement and civil penalty process. See e.g. 30 CFR 842.12 and 842.15. This revision makes clear the process of citizen participation in inspection, enforcement and civil penalty activities on Federal lands where OSM is conducting such activities.

Several commenters stated that proposed Section 740.4(b)(5) (revised Section 740.4(b)(4)) and 740.4(c)(5) -- which limit OSM, where there is a cooperative agreement, to conducting oversight inspections, enforcement and civil penalty activities on Federal lands, and to responding to citizen requests for Federal inspections -- violate sections 517, 518, and 521 of the Act. The commenters believe that the references in sections 518 and 521 to the Secretary's civil penalty and enforcement authority under the Federal lands program make explicit that his full inspection, enforcement and civil penalty authority (not just oversight authority) extends to Federal lands without regard to whether a cooperative agreement is in force. The commenter also reasoned that since the Secretary's enforcement authority on lands cannot be restricted to oversight, citizens cannot be limited to requesting Federal oversight inspections.

OSM disagrees that the Secretary must maintain full inspection, enforcement and civil penalty authority when a cooperative agreement is in place. Section 523(c) of the Act allows the Secretary to enter into a cooperative agreement with a State to provide for State regulation of surface coal mining and reclamation operations on Federal lands. OSM interprets this section to allow States with cooperative agreements to assume full responsibility for implementing the requirements of the Act on Federal lands, rather than joint responsibility with OSM. Further, OSM can find no prohibition in the Act against delegating to a State with a cooperative agreement the responsibility for inspection, enforcement and assessing civil penalties required under the Act. On the contrary, requiring dual inspection, enforcement and civil penalty systems (State and OSM) would be inconsistent with the intent of section 523(c) to allow States independently to implement SMCRA on Federal lands subject, of course, to OSM oversight and the express limitations on Secretarial delegation contained in section 523(c).

OSM agrees, however, that citizens have the right to request Federal inspections on Federal lands when a cooperative agreement is in place. This right is provided for in 30 CFR 842.12 and revised Section 740.4(b)(4), which make clear that OSM will continue to be responsible for 30 CFR Parts 842, 843 and 845 when a cooperative agreement is in place. Section 740.4(b)(4) has been revised to refer explicitly to citizens' rights to request Federal inspections.

Revised Section 740.4(b)(5) requires OSM to oversee a State's administration and enforcement of the terms of a cooperative agreement.

Revised Section 740.4(c), as proposed, sets forth those OSM responsibilities that may be delegated to a State regulatory authority under the terms of a cooperative agreement. Revised Section 740.4(c)(1) allows a State with a cooperative agreement to review permit applications and issue SMCRA permits for surface coal mining and reclamation operations on Federal lands. States could assume similar authority with respect to revisions and renewals of permits and applications for transfer, sale or assignment of permits. The previous regulations placed all these responsibilities with OSM. See previous 30 CFR 740.4(d).

One commenter opposed the delegation in revised Section 740.4(c)(1) because the commenter believes that OSM has improperly limited the Secretary's mining plan review authority to that authorized by the Mineral Leasing Act. Another commenter supported revised Section 740.4(c)(1), stating that it properly authorizes States with cooperative agreements to issue permits because under section 523(c) of the Act, the Secretary's duty to review mining plans applies only to Federally-owned coal.

OSM is adopting revised Section 740.4(c)(1) as proposed for the reasons discussed above under "Permit Application and Mining Plan Review and Approval."

OSM is adopting revised Sections 740.4(c)(2) and 740.4(c)(3), which correspond to the remaining requirements of previous 30 CFR 740.4(d). Revised Section 740.4(c)(2) continues the requirement of the second sentence of previous 30 CFR 740.4(d) for consultation with Federal land management agencies with respect to post-mining land uses and

special requirements for protection of non-coal resources in areas affected by surface coal mining. Revised Section 740.4(c)(3) continues the requirement of the last sentence of previous Section 740.4(d) that the Bureau of Land Management be consulted concerning the development, production and recovery of coal resources. This was formerly a requirement of the Geological Survey.

Under revised Section 740.4(c)(4), the State regulatory authority can assume the performance bond, Federal lessee protection bond and liability insurance responsibilities previously found in 30 CFR 740.4(f). Revised Section 740.4(c)(4) provides that, with respect to the Federal lessee protection bond, approval requires the concurrence of the Federal land management agency. Previous 30 CFR 740.4(f) inappropriately provided that, in addition to the Federal lessee protection bond, the Federal land management agency must concur in approval of the performance bond and liability insurance.

One commenter stated that the proposed change in previous Section 740.4(c) (4), to allow States with cooperative agreements to assume performance bonds and liability insurance responsibilities for surface coal mining and reclamation operations on Federal lands without the consent of the Federal land management agency, would be inconsistent with section 6 of the Federal Coal Leasing Amendments Act of 1976 *(30 U.S.C. 207*(c)).

OSM has declined to accept this comment because OSM believes that section 6 of the Federal Coal Leasing Amendments Act of 1976 does not prohibit the delegation of the bonding responsibilities under section 523(c) of the Act. Under revised Section 740.13(c)(6) and 740.4(f), the Federal land management agency must, among other things, be consulted prior to approval of permit applications (which include requirements for the performance bond). Final approval of the performance bond, however, is properly a function of the approved regulatory authority under SMCRA. The commenter is correct, however, in that under the Mineral Leasing Act, if the surface is under the jurisdiction of an agency other than the Department of the Interior, the Secretary must also obtain the concurrence of that other Federal agency prior to issuing the required approval under the MLA. To clarify this limitation, Section 740.4(f)(4) has been revised to state specifically that where the land contains leased Federal coal and the surface is under the jurisdiction of a Federal agency other than the Department, that other agency must concur in the terms of the mining plan approval.

The same commenter stated that it is inconsistent with section 715 of the Act to allow States to assume the performance bond and liability insurance responsibilities of OSM as was proposed. The commenter believes that, while it is clear from sections 509 and 715 of the Act that States with approved cooperative agreements are entitled to receive monies due under these bonds and, therefore, must have some concurrent responsibility over the administration of these bonds, it is equally clear that the Federal Government must retain some monetary and administrative responsibility for these bonds in order to protect the Secretary's stewardship interest in public lands and to protect his SMCRA responsibilities.

OSM disagrees with the commenter. Allowing States to assume the responsibilities set forth in revised Section 740.4(c)(4) is consistent with section 523(c) of the Act with respect to SMCRA responsibilities that are delegable to States. The Secretary will ensure that States properly carry out these delegated responsibilities on Federal lands through oversight of the State program and the cooperative agreement. The Secretary will retain a monetary interest in the bonds required on Federal lands, since revised Section 740.15(b) requires that bonds be payable to the United States in the absence of a cooperative agreement and to both the State and the United States where there is a cooperative agreement. Thus, the Federal Government will have both a monetary and an administrative interest in the bonds in all instances.

One commenter stated that Section 740.4(c) should allow OSM to delegate to States with cooperative agreements the release of performance bonds.

OSM agrees with this comment, and has revised Section 740.4(c)(4) accordingly. OSM believes it is reasonable to allow States with cooperative agreements to release performance bonds as well as to approve them.

Revised Section 740.4(c)(5) allows the State regulatory authority to be responsible for inspection, enforcement and imposition of civil penalties that would otherwise be performed by OSM as the regulatory authority. Where a State

assumes this responsibility under a cooperative agreement, OSM will assume an oversight role, as provided in revised Section 740.4(b)(4) of the regulations.

OSM has adopted revised Section 740.4(c)(6), as proposed. This section allows the State regulatory authority to assume the responsibility for review and approval of exploration plans for operations not subject to 30 CFR Part 211, such as on lands owned by the Tennessee Valley Authority and on Federal lands with underlying private coal. This will ensure that no gap exists between State regulatory authority and BLM responsibilities for exploration on Federal lands in States with cooperative agreements.

One commenter stated that, since the Secretary's authority under section 523 of the Act to administer the Federal lands program is not limited to Federally-owned coal, no State should be given authority to review and approve coal exploration plans on lands owned by the Tennessee Valley Authority and on Federal lands with underlying private coal.

OSM disagrees with this comment. OSM believes that States should have the authority to approve exploration operations under a cooperative agreement for Federal lands not governed by 30 CFR Part 211. This is consistent with section 523(c) of the Act. OSM has this responsibility in the absence of a cooperative agreement.

Revised Section 740.4(c)(7), as proposed, allowed the State regulatory authority to assume some responsibility for preparation of documentation in compliance with the National Environmental Policy Act (NEPA). In adopting revised Section 740.4(c)(7), OSM recognizes that where the State prepares NEPA documentation, OSM must (1) furnish guidance and participate in the preparation of NEPA documents and (2) independently evaluate NEPA documents prior to approval or adoption in order to make the ultimate decision on Federal action to be taken on the alternatives presented in any NEPA documents. The State regulatory authority may be authorized to prepare NEPA compliance documents (environmental assessments (EA's) or (environmental impact statements (EIS's)), provided OSM: (1) Determines the scope, content, format and objectivity of NEPA compliance documents and jointly participates in preparing such documents; (2) makes the determination of whether or not the preparation of an EIS is required; (3) notifies and solicits views of other State and Federal agencies, as appropriate, on the environmental effects of the action; (4) publishes and distributes draft and final NEPA compliance documents; (5) makes policy responses to comments on draft NEPA compliance documents; (6) independently evaluates NEPA compliance documents; and (7) adopts NEPA compliance documents and determines Federal actions to be taken on the alternatives presented in them.

One commenter suggested that OSM include in the list of responsibilities delegable to States under cooperative agreements consultation and participation in processes to designate Federal lands as unsuitable for mining.

OSM has declined this suggestion because OSM's and the Secretary's responsibilities in this area are non-delegable under *30 U.S.C. 1273*(c) and because the States' role in OSM's Federal lands unsuitability process is addressed in 30 CFR Part 769, the revision of which is the subject of a separate rulemaking.

As proposed, revised Section 740.4(d) identifies the responsibilities assigned to the BLM. Revised Section 740.4(d) continues the requirements of previous Sections 740.4(h) and 740.4(i) with minor exceptions, including the replacement of the Geological Survey with the Bureau of Land Management as the responsible agency to reflect the Secretary's Order No. 3087 (December 3, 1982) which transferred these responsibilities to BLM. In addition, revised Section 740.4(d)(2) refers to coal exploration licenses issued pursuant to 43 CFR Part 3400 (instead of 43 CFR Part 3507) to conform to revisions in those regulations. Revised Section 740.4(d)(1) and 740.4(d)(5) delete references to the permit area, to reflect changes in 30 CFR Part 211 that alter responsibilities for exploration on Federal lands. See *47 FR 33154* (July 30, 1982). Under revised Section 740.4(d)(4), the Bureau of Land Management is responsible for reviewing the resource recovery and protection plan portion of the permit application package and for recommending to the Secretary approval, conditional approval or disapproval of the resource recovery and protection plan, as outlined earlier in this notice. Revised Section 740.4(d)(6) indicates that BLM is responsible for protecting mineral resources not under lease.

Revised Section 740.4(d)(7) indicates that BLM is responsible for the issuance of exploration licenses for Federally-owned coal. Revised Section 740.4(d)(8) makes BLM responsible for the issuance of leases and licenses to mine pursuant to 43 CFR Part 3400. Revised Section 740.4(d) (9) indicates that BLM is responsible for the issuance,

readjustment, modification, termination, cancellation, and approval of transfers of Federal coal leases required by the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 *(30 U.S.C. 351,* et seq.).

OSM is adopting revised Section 740.4(e) substantially as proposed. That section identifies specific responsibilities of Federal land management agencies. Revised Section 740.4(e) acknowledges the responsibility of Federal land management agencies to make certain decisions regarding surface coal mining and reclamation operations on Federal lands within their jurisdiction. Federal land management agencies are responsible, under revised Section 740.4(e), for determining post-mining land uses (revised Section 740.4(e)(1)), ensuring protection of non-mineral resources (revised Section 740.4(e)(2)), and imposing appropriate conditions on surface coal mining and reclamation operations on lands under their jurisdiction (revised Section 740.4(e)(3)). In accordance with the comment discussed above under Section 740.4(c)(4), where lands containing leased Federal coal are under the jurisdiction of an agency other than the Department, that agency must also concur in the terms of the mining plan approval.

One commenter expressed concern that BLM might not have the same responsibilities under Section 740.4(f) that other Federal land management agencies have in view of the separate treatment of BLM under Section 740.4(e).

Revised Section 740.4(e) lists those BLM responsibilities that other Federal land management agencies do not share, while revised Section 740.4(f) lists those responsibilities shared by all Federal land management agencies, including BLM.

SECTION 740.5 - DEFINITIONS.

As proposed, revised Section 740.5 deletes several terms defined in previous 30 CFR 740.5. The definition of the term "authorized State regulatory authority" has been deleted because the term is not used in revised Subchapter D. The term has been replaced by "regulatory authority," which means both OSM acting prior to approval of a cooperative agreement and the State regulatory authority acting afterwards.

One commenter stated that OSM should not delete the term "State regulatory authority" because States with approved cooperative agreements can never be the sole regulatory authority on Federal lands.

OSM has rejected this comment and is deleting the term "State regulatory authority," as proposed. This change is consistent with the other changes in these regulations to allow States with cooperative agreements to assume full responsibility for administering delegable requirements of the Act on Federal lands in accordance with section 523(c) of the Act.

Definition of the term "mining supervisor" has been deleted, as proposed, because the term is not used in revised Subchapter D. "Authorized officer" has been redefined to refer to any person authorized to take official action on behalf of a Federal agency having responsibility relating to Federal lands. "Cooperative agreement" has been defined as a cooperative agreement approved in accordance with section 523(c) of the Act and 30 CFR Part 745.

The term "surface managing agency" has been replaced by the term "Federal land management agency" to clarify that "Federal land management agency" applies specifically to the agency having jurisdiction over the surface of the Federal lands in question.

One commenter stated that the phrase "surface of" should be deleted from the definition of "Federal land management agency" since in many cases TVA holds only a mineral interest in its coal lands.

OSM has rejected this comment and is adopting the definition of "Federal land management agency" as proposed. While OSM recognizes that the definition of "Federal land management agency" has the effect of excluding circumstances where TVA holds only a mineral interest in its coal lands, the proposed definition will suffice, since the regulations which utilize the term are only concerned with the activities of the agency with jurisdiction over the surface of such lands.

Consistent with the revised structure of Subchapter D, the definitions of "Federal lease bond" and "Federal lessee protection bond" have been moved from previous Section 742.5 to revised Section 740.5. Thus, all definitions for Subchapter D appear in revised Section 740.5. The definition of "Federal lease bond" has been revised to be consistent with the regulations of the Bureau of Land Management at 43 CFR Part 3400.

"Leased Federal coal" has been defined as coal leased pursuant to 43 CFR Part 3400, except for mineral interests in coal on Indian lands. Definition of this term is necessary because the responsibilities of different Federal agencies and the applicability of such laws as the Mineral Leasing Act are dependent upon whether or not leased Federal coal is involved.

As proposed, the definition of "mining plan" has been revised to mean the plan for mining leased Federal coal required by the Mineral Leasing Act. The reasons for the revised definition of "mining plan" are discussed above under "Permit Application and Mining Plan Review and Approval."

The proposed definition of "performance bond" has been deleted from Section 740.5 because the term is already defined at 30 CFR Part 701.5.

The new term "permit application package" is treated above in the discussion of "Permit Application and Mining Plan Review and Approval." It refers to the application materials submitted by a person desiring to mine on Federal lands and includes, among other things, the permit application required under SMCRA and, where Federal coal is under lease, the resource recovery and protection plan (RRPP) required under the Mineral Leasing Act.

One commenter stated that SMCRA permit applications and MLA RRPP's should not be combined into "permit application packages." The commenter believes that the separate functions under SMCRA, and under the MLA, must be clear and concise, which is not possible if the requirements of the two acts are combined.

OSM disagrees with the commenter for the reasons discussed above under "Permit Application and Mining Plan Review and Approval." Further, by combining the requirements of the permit application under SMCRA and the RRPP in one permit application package, conflicting or duplicative submittals can be eliminated and approval of the mining plan can be coordinated among the Federal agencies involved.

As proposed, the term "regulatory authority" has been defined as OSM when OSM is administering Subchapter D (as will be the case where there is no cooperative agreement) and as the State regulatory authority when the State is administering the requirements of its program on Federal lands under a cooperative agreement.

As proposed, the term "TVA-owned land" has been defined as land owned by the United States and entrusted to or managed by the Tennessee Valley Authority.

Other terms used in the rules have meanings as set forth in 30 CFR Part 211. These include "exploration," "exploration plan," "maximum economic recovery," "method of operation," "mine" and "resource recovery and protection plan."

SECTION 740.10 - INFORMATION COLLECTION.

Revised Section 740.10 corresponds to the "Note" at the beginning of previous 30 CFR Part 741 with respect to permits and the "Note" at the beginning of 30 CFR Part 742 with respect to bonds; it identifies the OMB approval numbers for the relevant information collection requirements of those Parts. OSM has deleted these notes and is codifying OMB's revised approval of the relevant information collection requirements of previous Parts 741 and 742 in revised Section 740.10.

SECTION 740.11 - APPLICABILITY.

OSM is adopting, as proposed, Section 740.11, which describes when Subchapter D and a regulatory program will be applicable to surface coal mining and reclamation operations on Federal lands within a State.

Section 740.11(a) provides that upon approval of a regulatory program for a State, Subchapter D and that regulatory program will become applicable to (1) coal exploration operations on Federal lands not subject to 30 CFR Part 211; (2) surface coal mining and reclamation operations on lands containing leased Federal coal; and (3) surface coal mining and reclamation operations on lands where either the coal to be mined or the surface is owned by the United States, except as specified in Subchapter D. This clarifies an ambiguity in the previous regulations pertaining to the location of surface facilities on private- or State-owned surface that might overlie Federal minerals, but where there is no Federal coal mining contemplated. OSM believes that, because of the interaction of the State primacy provision, section 503 of the Act, with section 523 of the Act, the Federal lands program can be interpreted to exclude State- or privately-owned surface overlying Federally-owned coal where the operation will not involve mining the Federally-owned coal and where there will be no disturbance of the Federally-owned estate. This secondary impact to the Federal interest will be so slight that OSM does not believe that Congress intended that the provisions of the Federal lands program should be imposed in addition to the requirements of the applicable Federal or State regulatory program.

OSM had proposed to make the Federal lands program applicable to surface coal mining and reclamation operations on lands "where either the surface or mineral interests owned by the United States will be directly affected by such operations * * *" Several commenters addressed the use of the term "directly affected" in proposed Section 740.11(a). One commenter stated that it should be qualified by the phrase "in a manner requiring reclamation" to preclude minimum effects like blowing dirt from triggering applicability.

Another commenter stated that "directly affected" should be clarified to mean either actual mining or exploration of Federally-owned coal or action that would incidentally preclude the coal from being mined in the future. This commenter noted that since SMCRA is not concerned with the leasing of the right or removal of the coal itself, OSM does not have jurisdiction over mining operations on lands containing unleased Federal coal.

A third commenter stated that the phrase "directly affected" should be clarified so that the State's delegated responsibilities regarding coal exploration activities will not be confused with other delegated requirements pertaining to surface coal mining and reclamation obligations.

A fourth commenter stated that more clarity is needed as to what a Federal mineral "interest" and "directly affected" mean. This commenter noted that if a Federal mineral interest pertains to leased coal only, then that should be stated.

A fifth commenter noted that OSM should not restrict the Act's requirements to surface coal mining and reclamation operations on lands "where either the surface or mineral interests owned by the United States will be directly affected by such operations." The commenter asserted that there is no statutory basis for this since such surface activities would be "incidental" to the underlying Federal coal and, therefore, within the definition in section 701(28)(B) of "surface coal mining" which includes "areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities." The commenter also asserted that the non-applicability of the Mineral Leasing Act to private coal underlying Federal lands is no reason to restrict SMCRA to lands which are "directly affected" by such operations.

Several commenters stated that OSM should clarify that in the case of intermingled Federal and non-Federal coal covered by the same mining permit, the prohibition on mining before the Secretary's approval applies only to the Federal coal.

OSM has reviewed these comments and has decided to continue to recognize a limitation on the applicability of the Federal lands program where the effect on a Federal interest will be minimal. The final rules, however, have been revised based upon the comments indicating confusion with respect to the use of the phrase "directly affected." Under the final rules, this phrase has not been adopted and the rules have been clarified to indicate that Subchapter D applies to surface coal mining and reclamation operations on lands containing leased Federal coal and lands where either the coal to be mined or the surface is owned by the United States.

OSM has, as proposed, revised Section 740.11(b), which provides that, where OSM is administering Subchapter D and applying a State program prior to approval of a cooperative agreement for the State, references in the State

program to the State or to officials of the State (with respect to functions of the State regulatory authority will be construed as references to OSM in order that OSM can effectively administer State program requirements.

Section 740.11(c) provides that where the Secretary and the State have entered into a cooperative agreement, the cooperative agreement will delineate the responsibilities of the Secretary and the State with respect to administration of the regulatory program and Subchapter D. For example, where the Secretary has entered into a cooperative agreement with a State, the State regulatory authority will assume the primary role for the review and processing of permit applications on Federal lands, subject to the terms of the cooperative agreement. The cooperative agreement, in addition to providing for State processing of permit applications on Federal lands, will specify how the responsibility for administration of the additional requirements of this Subchapter for a permit application package will be divided between OSM and the State regulatory authority. Although some of the additional requirements are non-delegable, it is possible for the State to perform much of the basic research and analysis required for the Department to determine compliance with such requirements.

Section 740.11(d) reserves to the Secretary and other Federal agencies the right to condition actions affecting Federal lands within their jurisdictions in accordance with section 702(b) of SMCRA. For example, a decision regarding surface coal mining and reclamation operations may be subject to: (1) Conditions on mining that may have resulted from the review of Federal areas for unsuitability for mining under Subchapter F of this Chapter; (2) terms and conditions or special stipulations of a lease issued pursuant to the Mineral Leasing Act; and (3) any land use plans or other requirements of the Federal land management agency with respect to the surface estate.

Revised Section 740.11(e) provides that Subchapter D does not apply to surface coal mining and reclamation operations within a State prior to promulgation of a permanent regulatory program for that State. Prior to such approval, the SMCRA requirements incorporated in 30 CFR Part 211 and 30 CFR Chapter VII, Subchapter B will apply to surface coal mining and reclamation operations on Federal lands within the State. The Department has promulgated regulations to delete these requirements from 30 CFR Part 211, but only after final promulgation and implementation of revised Subchapter D. See *47 FR 33154* (July 30, 1982).

One commenter stated that the Federal lands program applies to States with Federal lands within their boundaries regardless of whether or not a State has achieved primacy to administer the Act. The commenter also stated that the requirements of 30 CFR Part 211 are no substitute for those of OSM's interim program on Federal lands prior the State obtaining primacy. For those reasons the commenter was opposed to Section 740.11(e).

This comment is based on a misconception of how the Secretary has implemented the interim program on Federal lands. The interim program performance standards apply on Federal lands (30 CFR 710.11(c)) and, with respect to lands containing leased Federal coal, were incorporated into 30 CFR Part 211 *(43 FR 37181* (August 22, 1978)). These requirements have been applicable in States without State programs and will remain so until Subchapter D becomes effective, at which time the permanent program standards take effect. See *44 FR 77440* (December 31, 1979); *47 FR 33154* (July 30, 1982). Thus, for example, only the interim program performance standards (and not 30 CFR 211) are applicable to surface coal mining operations on Federal lands without leased Federal coal in a State prior to the approval of a regulatory program. Final section in 30 CFR Part 211 and 30 CFR Chapter VII, Subchapter B will apply to surface coal mining and reclamation operations on Federal lands within the State. The Department has promulgated regulations to delete these requirements from 30 CFR Part 211, but only after final promulgation and implementation of revised Subchapter D. See *47 FR 33154* (July 30, 1982).

One commenter stated that the Federal lands program applies to States with Federal lands within their boundaries regardless of whether or not a State has achieved primacy to administer the Act. The commenter also stated that the requirements of 30 CFR Part 211 are no substitute for those of OSM's initial regulatory program on Federal lands prior the State obtaining primacy. For those reasons the commenter was opposed to Section 740.11(e).

This comment is based on a misconception of how the Secretary has implemented the initial regulatory program on Federal lands. The initial regulatory program performance standards apply on Federal lands (30 CFR 710.11(c)) and, with respect to lands containing leased Federal coal, were incorporated into 30 CFR Part 211 *(43 FR 37181* (August 22, 1978)). These requirements have been applicable in States without State programs and will remain so until

Subchapter D becomes effective, at which time the permanent program standards take effect. See *44 FR 77440* (December 31, 1979); *47 FR 33154* (July 30, 1982). Thus, for example, only the initial regulatory program performance standards (and not 30 CFR 211) are applicable to surface coal mining operations on Federal lands without leased Federal coal in a State prior to the approval of a regulatory program. Final Section 740.11(e) makes clear that the permanent Federal lands program becomes applicable when a regulatory program is implemented in a State. Thus, for example, when the State achieves primacy, the permanent Federal lands program, 30 CFR Chapter VII, Subchapter D, becomes applicable to Federal lands within a State.

OSM is adopting a new Section 740.11(f) which provides that, where coal exploration or surface coal mining and reclamation operations within a State are only on Federal lands and where no State or Federal program has been approved for the State, this subchapter shall apply in that State upon the effective date of these regulations. The regulatory program triggering the applicability of subchapter D, in this case, is the permanent program requirements of subchapters A, F, G, J, K, L, M, and P of Chapter VII. See the revised definition of "regulatory program" under revised Section 700.5. Thus, new Section 740.11(f) ensures that the permanent program requirements of SMCRA apply on Federal lands in States that do not have approved State or Federal programs implementing these requirements.

SECTION 740.13 - PERMITS.

OSM is adopting revised Section 740.13 which retains and consolidates those requirements of previous Part 741 that are unique to Federal lands and will not be included in a regulatory program. Those portions of previous Part 741 that have counterparts in the applicable regulatory program have not been repeated in revised Subchapter D. Persons concerned with the requirements for a permit to conduct surface coal mining and reclamation operations on Federal of the state regulatory program" in order to mitigate any adverse impacts on adjacent Federal lands.

OSM believes that adequate protection of any affected Federal resource will be ensured by applying the performance standards of the same regulatory program to both Federal and non-Federal lands. Any impacts on the Federal resource that cannot be satisfied by the State program are subject to the additional requirements of Subchapter D. Thus, this comment was rejected.

OSM is adopting revised Section 740.13(a)(1), as proposed. This section provides that no person shall conduct surface coal mining and reclamation operations on Federal lands unless that person has first obtained a permit issued pursuant to the regulatory program. Thus, operators proposing to conduct surface coal mining and reclamation operations on Federal lands must comply with the permitting and approval requirements of both the applicable regulatory program and Part 740. The requirements of Part 740 supplement the regulatory program by specifying those additional requirements that are unique to Federal lands and outside of the scope of the regulatory program.

OSM is adopting revised Section 740.13(a)(2), as proposed. It retains, with minor revisions, the requirements of previous Section 741.11(d), which provided that the permittee shall conduct operations in accordance with all requirements of the permit and lease or license, Subchapter D and all other applicable State and Federal laws.

Previous Section 741.11(c) provided for surface coal mining and reclamation operations on Federal lands to continue past the eight-month period established by previous Section 741.11(a) where the operations are being conducted under a mining plan approved by the Secretary in accordance with the Act and 30 CFR Part 211. With revisions, this section has been retained as revised Section 740.13(a)(3), although the cross-reference to previous Section 741.11(a) has been changed to "the applicable regulatory program." The permitting requirements of the applicable regulatory program will implement the requirement of section 506(a) of the Act that unpermitted surface coal mining operations not continue beyond eight months after the approval of a State or Federal program. It should be noted that the eight-month deadline for submission of a permit application as it applies to ongoing operations that were required to have a previously approved 30 CFR 211 mining plan is limited to lands containing leased Federal coal. Section 740.13(a) has been revised to reflect the limited applicability of 30 CFR Part 211. On Federal lands where only the surface is Federally-owned, the applicable regulatory program will govern the timing of submission of permit applications for ongoing operations.

One commenter opposed the deletion of previous Section 741.12 because its removal is premised upon the agency successfully delegating to the States with approved cooperative agreements the Secretary's authority to issue permits.

OSM has declined to accept this comment. Deletion of previous Section 741.12 is consistent with other changes in Subchapter D to separate the SMCRA permit requirement from the MLA mining plan requirement. See above discussion of "Permit Application and Mining Plan Review and Approval."

SECTION 740.13(b) - PERMIT APPLICATION PACKAGE.

Previous Section 741.13, which corresponds to revised Section 740.13(b), has been revised by adding the word "package" to the title. This clarifies that the material submitted by an operator proposing to conduct surface coal mining and reclamation operations on Federal lands includes, in addition to the documentation required for a SMCRA permit submitted pursuant to the applicable regulatory program, the documentation and information necessary to determine compliance with all other requirements for mining on Federal lands.

As proposed, previous Section 741.13(a) has been redesignated as Section 740.13(b)(1) and revised to provide that permit fees on Federal lands will be determined in accordance with the permit fee criteria of the applicable regulatory program.

One commenter suggested that previous Section 740.13(b)(1) should reflect circumstances where permit revisions and renewals may not require a filing fee.

OSM has declined to accept this comment because revised Section 740.13(b)(1) clearly makes the permit fee structure of the appropriate regulatory program applicable. Whether or not a fee will be required for permit revisions and renewals will depend on the provisions of the applicable regulatory program, provisions which may vary among regulatory programs. If the applicable State program is silent on the collection of such fees, however, then none will be required for Federal lands in that State.

One commenter stated that proposed Section 740.13(b)(1) should provide flexibility to establish permit fees on Federal lands which differ from those imposed on non-Federal lands in the same State, since often there can be additional administrative responsibilities on Federal lands.

OSM considered several alternatives for establishing the fee schedule, including setting higher fees for administrative responsibilities on Federal lands that may be in addition to those required on non-Federal lands. OSM has decided against higher fees for permit applications on Federal lands because it prefers not to deviate from the applicable regulatory program except where there are compelling reasons for doing so.

As proposed, revised Section 740.13(b)(2) incorporates and continues the requirement of previous Section 741.13(b) that the applicant file at least seven copies of the complete permit application package with the regulatory authority.

One commenter suggested that revised Section 740.13(b)(2) should allow flexibility on the number of permit application copies required, since seven may be too many for some regulatory authorities and too few for others.

OSM has accepted this comment and has modified Section 740.13(b)(2) to allow for variations in the number of copies of permit application packages that will be required where there is a cooperative agreement and the State is the regulatory authority. In that instance, the cooperative agreement will specify the required number of copies. However, where OSM is the regulatory authority, it will continue to require seven copies because that number is needed for distribution to reviewers.

Revised Section 740.13(b)(3)(i) and (ii) requires that the permit application package include (1) the information required for a permit application under the applicable regulatory program, and (2) the resource recovery and protection plan required under 30 CFR Part 211. Providing that the permit application package include the permit application required by the applicable regulatory program is consistent with the intent of Subchapter D to apply the

substantive and procedural requirements of the applicable regulatory program on Federal lands. The resource recovery and protection plan will be included in the permit application package, where necessary, for reasons discussed earlier under "Permit Application and Mining Plan Review and Approval."

Section 740.13(b)(3)(ii) has been revised in the final rule to clarify that a resource recovery and protection plan is required only for lands containing leased Federal coal, not for all Federal lands.

OSM is adopting a new Section 740.13(b)(3)(iii) that requires the permit application package to include the supplementary information that was proposed to be required by proposed Section 746.12. Proposed Section 746.12 listed supplementary information that would assist the regulatory authority in determining compliance with Federal laws and regulations other than SMCRA, and executive orders as they relate to surface coal mining and reclamation operations on lands subject to Subchapter D. Revised Section 740.13(b)(3)(iii) simplifies the structure of the regulations by including all supplementary information requirements for the permit application package in one section.

While OSM expects that most of the information needed to determine compliance with Federal laws, regulations and orders other than the Act will be included in the SMCRA permit application, those items listed under new Section 740.13(b)(3)(iii) would be unlikely to be included otherwise. For example, the reference under revised Section 740.13(b)(3)(iii)(D) to a plan to evaluate properties listed or eligible for listing on the National Register of Historic Places indicates OSM's emphasis on the need to preserve worthwhile cultural and historical information, in accordance with the National Historic Preservation Act, and to proceed with identification and evaluation in an efficient and timely fashion. The Advisory Council on Historic Preservation has supported OSM in this approach to cultural resource management.

One commenter suggested that proposed Section 746.12 (revised Section 740.13(b)(3)(iii)) should state that the information is required before mining plan approval, and that this section is advisory as to including the listed material in the initial permit application package.

OSM disagrees with the commenter because the information required under revised Section 740.13(b)(3)(iii) is important to the timely review and approval of both the permit where OSM is the regulatory authority and, as applicable, the mining plan. It will facilitate compliance with Federal laws and regulations other than SMCRA and the SMCRA permit application and thereby minimize the burden on the operator.

One commenter suggested that OSM should clarify that, in the case of intermingled Federal and non-Federal lands, the information showing compliance with NEPA provisions would be required only as it pertained to Federal lands, since Secretarial approval of the mining plan is necessary for the Federal lands only.

OSM agrees that mining plan approval applies only to Federal lands. In some areas the required analysis can be limited to the Federal lands involved. In other cases, such as the evaluation of hydrologic impacts, the analysis could extend beyond the Federal lands boundaries. Thus, while the required information must be sufficient to allow OSM to fully analyze the environmental effects of mining on Federal lands, it will also be necessary in some instances to consider the related non-Federal lands.

One commenter stated that proposed Section 746.12(a)(6) should be removed, because establishing a relationship between the cumulative hydrologic impact assessment requirements of section 507(b)(11) of SMCRA and the Federal Water Pollution Control Act (FWPCA) is in error.

Proposed Section 746.12(a)(6) was not intended to establish a relationship between section 507(b)(11) of SMCRA and the FWPCA as suggested by the commenter; however, OSM has not included proposed Section 746.12(a)(6) in the final rule because it was somewhat confusing. Further, this information is unnecessary, since the FWPCA requirements for hydrologic protection, including compliance with water quality standards and effluent limitations, are fully covered by the regulatory program under SMCRA.

Two commenters stated that proposed Section 746.12 (revised Section 740.13(b)(3)(iii)) should be written to indicate clearly the necessary data elements to be included as part of the permit application package. Otherwise, delays

in the mine plan approval process will result because of differences of opinion as to what is "necessary" supplemental information.

OSM agrees with the commenter and has provided specific language concerning the information required by this section. Revised Section 740.13(b)(3)(iii)(A) requires a description of the affected area of the proposed surface coal mining and reclamation operations with respect to (1) increases in employment, population and revenues to public and private entities, and (2) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations. This requirement parallels proposed Section 746.12(a)(1)(i) and will assist in preparation of documentation in compliance with the National Environmental Policy Act.

Revised Section 740.13(b)(3)(iii)(B) requires an evaluation of impacts to scenic and aesthetic resources including noise on the surrounding area due to the proposed surface coal mining and reclamation operation. This requirement parallels proposed Section 746.12(a)(1)(iii) and will also be used to assist in preparation of documentation in compliance with NEPA.

Revised Section 740.13(b)(3)(iii)(C) requires a statement, including maps and ownership data, as appropriate, of any cultural or historical site listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation. Additionally, Section 740.13(d)(3)(iii)(D) requires a statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR Part 800, of properties significant and listed or eligible for listing on the National Register of Historic Places within the disturbed area of the proposed surface coal mining and reclamation operation. This information will assist in insuring compliance with the National Historical Preservation Act of 1976, the Archeological Resources Protection Act of 1977 and other related requirements pertaining to cultural and historic resources. These requirements roughly parallel proposed Section 746.12(a) (2) and (3) as revised based upon discussions with the Advisory Council on Historic Preservation.

Revised Section 740.13(b)(3)(iii)(E) requires a description of the probable changes in air quality resulting from the mining operation and any necessary measures to comply with the prevention of significant deterioration limitations, State implementation plans for air quality protection and any other State or Federal Laws. These requirements parallel requirements of proposed Section 746.12(a)(5) and will provide information to determine compliance with the Clean Air Act.

Revised Section 740.13(b)(3)(iii)(F), (G), and (H) require information pertaining to fish and wildlife resources to assist in evaluating compliance with the Fish and Wildlife Act of 1958, the Endangered Species Act, the Fish and Wildlife Coordination Act, and other related requirements. These sections require (1) a description of the location, acreage, and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation, (2) a description of active and inactive nests and prey areas of any bald or golden eagles located within the affected areas of the proposed surface coal mining and reclamation operations, and (3) a description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations. Similar requirements relating to fish and wildlife were included in proposed Section 746.12(a)(4)

OSM has deleted previous Section 741.13(c)(1) and (2), as proposed. This section, which described the required contents of a permit application, is unnecessary in the final rules because equivalent provisions will be contained in the applicable regulatory program.

OSM has adopted the proposed redesignation of previous Section 741.13(c)(3), concerning Federal lessee protection, as revised Section 740.13(b)(4) and added language to clarify that it does not apply to TVA-owned lands. See section 701(4) of the Act.

Previous Section 741.14, which addressed permitting requirements for special operations, has been removed, as proposed, because similar requirements will be included in each regulatory program.

Previous Sections 741.15(a), (b)(1), (b)(3) and (b)(4) have been removed, as proposed, because similar requirements will be included in each regulatory program.

SECTION 740.13(c) PERMIT REVIEW AND PROCESSING.

OSM has adopted revised Section 740.13(c), essentially as proposed; it provides that the permit processing requirements of the applicable regulatory program will be used to process permits on Federal lands, subject to the additional requirements specified under revised Sections 740.13(c)(1) through 740.13(c)(9).

OSM has adopted, as proposed, revised Section 740.13(c)(1), "Permit terms and conditions," which provides that any applicable requirements of other Federal laws and regulations, including the Mineral Leasing Act, must be reflected in the terms and conditions for permits. This section continues the requirement of previous Section 741.15(b)(2) that no extension of a permit term may be granted if the effect of that extension would be to extend the term of a Federal coal lease beyond the period allowed for diligent development under that lease and section 7 of the Mineral Leasing Act.

One commenter asked OSM to clarify whether it is the State's responsibility to incorporate the terms of the lease and other requirements of the MLA and other Federal laws in the SMCRA permit and, if so, who would enforce such terms and requirements.

While States with cooperative agreements may independently review and approve permit applications on Federal lands, these regulations prohibit the commencement of operations that are subject to mining plan approval until the Secretary has approved such plan. In order to ensure compliance with non-SMCRA matters (e.g., MLA, NEPA, lease terms and stipulations, etc.), the Secretary may impose additional requirements for mining in his approval of the mining plan. OSM will rely on the States with cooperative agreements to assist in enforcing these additional requirements as part of the State's inspection and enforcement program. Each cooperative agreement will detail how these responsibilities will be handled since the precise roles of OSM and the States will vary from State-to-State.

Previous Section 741.16, which required permits to reflect local and regional conditions, has been removed, as proposed, since its purpose will be accomplished by incorporation of State and Federal programs into the Federal lands program. Each State or Federal program is mandated by the Act to take regional and local conditions into account.

Revised Section 740.13(c)(2), "Criteria for permit approval or denial," corresponds to previous Section 741.17. As proposed, the introductory paragraph of previous Section 741.17 (which required that the Director make the written findings required by 30 CFR Part 786 regarding permit applications) and all of previous Section 741.17(b) (which required that the applicant satisfy all applicable requirements for approval of permits under 30 CFR Part 786) have been removed because similar provisions will have been included in the applicable regulatory program.

One commenter suggested that proposed Section 740.13(c)(2) and (7) allow the regulatory authority to approve a permit application if it is in accordance with the requirements of the applicable regulatory program (rather than the requirements of Part 740) and process the approval within the time frames of that program.

OSM disagrees with the commenter because Parts 740-746 impose some requirements on the regulatory authority in addition to those of the applicable regulatory program. For example, where OSM is the regulatory authority, under revised Section 740.13(c)(1), the SMCRA permit terms and conditions must reflect requirements of other Federal laws and regulations as they apply to the lands in question. Another example is the required consultation with Federal land management agencies, which may affect decisions on permits. The precise requirements where a State is the regulatory authority will be addressed in the applicable cooperative agreements. Thus, this section has been revised to indicate that either the requirements of Part 740 or the cooperative agreement will apply to permit approval or denial.

With regard to the second point made by the commenter, it will not always be possible to approve a permit within the time frames in the State programs due to the additional requirements of Subchapter D. However, OSM believes that any such delays will be minimal.

As proposed, previous Section 741.17(a) has been removed because Subchapter D does not require that the Secretary approve the mining plan prior to approval of the permit application.

One commenter stated that previous Section 741.17(a) should not be deleted because, "even though actual commencement of mining on Federal lands would not be allowed until the Secretary has approved the mining plan, this change would allow the State regulatory authority to get out ahead of the Secretary and would prevent the Secretary from making a meaningful determination of the consistency of the proposed mining activity, as described in the permit application, with the plan of operation for the life of the mine."

OSM has rejected this comment and has deleted previous Section 741.17(a), as proposed. As discussed above, under "Permit Application and Mining Plan Review and Approval," the Secretary is confident that he will be able to ensure consistency between the approved mining plan and the permit under the revised Federal lands program.

As proposed, previous Section 741.17(c), which required the Director and the State regulatory authority to concur in permit approval where there is a State-Federal cooperative agreement, has been removed.

One commenter opposed the deletion of previous Section 741.17(c), noting that OSM has not explained the basis for this deletion and that such deletion (insofar as it severed permit approval from mining plan approval) was inconsistent with section 523 of the Act.

While OSM did not include a lengthy explanation of the proposed deletion of previous Section 741.17(c), this change was proposed because of, and clearly is consistent with, the overall revisions to Subchapter D in allowing States with cooperative agreements an independent role in the approval of SMCRA permit applications on Federal lands.

OSM has, as proposed, revised previous Section 741.17(d) and redesignated it Section 740.13(c)(2). Revised Section 740.13(c)(2) provides that SMCRA permit applications for mining on Federal lands may not be approved unless they are in accordance with the requirements of the applicable regulatory program and revised Part 740 or a cooperative agreement, as applicable. Previous Section 741.17(d) had required permit applicants to comply with, among other things, the Mineral Leasing Act. The effect of the revision is to ensure continued compliance with all Federal laws and regulations applicable to permit applications, but to separate permit approval from mining plan approval, since the latter is a requirement of the Mineral Leasing Act.

OSM is adopting, as proposed, revised Section 740.13(c)(3), "Public participation in permit review process," which corresponds to previous Section 741.18. Revised Section 740.13(c)(3) provides that the matters already covered by public hearings held under the MLA need not be readdressed in SMCRA permit hearings, and may be made a part of the record of hearings held on the permit application. The reference to the public participation provisions in 30 CFR 786.11 through 786.15 has been removed since the public participation requirements of the applicable regulatory program will apply.

Two commenters opposed reliance on the public participation requirements of approved State regulatory programs because any appeal of a decision on a permit application would be to the State authority where a cooperative agreement is in place. As a result, citizens would not retain rights that they now have to utilize the Federal appeal process. These commenters also believe that State review of the Federal aspects of the permitting decision would be inconsistent with section 523 of the Act. Thus, these commenters opposed the deletion of the cross-reference in previous section 741.18 to the public participation provisions of 30 CFR 786.11 through 786.15.

OSM has rejected this comment because States with cooperative agreements will independently review permit applications on Federal lands in accordance with the requirements of their approved State programs. Since the approved State program will contain provisions for public participation, including appeal of decisions on the permit, OSM believes that the proper avenue for appeals should be through the State. Such appeals will be limited, however, to SMCRA matters and not to matters concerning non-delegable responsibilities of the Secretary, such as decisions relating to the Secretary's approval of the mining plan. Appeals of non-delegable decisions will be to the Federal administrative process.

Proposed Section 740.13(c)(4), "Availability of information," would have retained the requirement of previous Section 741.19(a)(2) that information exempt from disclosure under the Freedom of Information Act *(5 U.S.C. 552*(b)) shall be held in confidence by the Office in accordance with 43 CFR Part 2. The proposed provision has not been adopted previous Section 741.19 has been removed since similar requirements will be included in the applicable regulatory program.

One commenter stated that previous Section 741.19, which required OSM and the State authority to make available for public inspection information in permit applications, should not be deleted since similar requirements in approved State programs cannot be imposed upon OSM.

OSM has declined to accept this comment and has adopted the revision, as proposed. Contrary to the assertion of the commenter, OSM , as the regulatory authority in the absence of a cooperative agreement, will follow the substantive and procedural requirements of the applicable regulatory program, including those relating to the public availability of information in permit applications. See revised Section 740.11(b).

Revised Section 740.13(c)(4), "Permit review processing for operations on lands administered by a Federal land management agency," retains, with minor revisions, the requirement of previous Section 741.20 that a copy of the permit application package be transmitted to the Forest Service for review. The revision in the title makes revised Section 740.13(c)(4) applicable to all Federal land management agencies, not just the Forest Service. The language concerning the consent of the Forest Service to the approval of the permit application has been removed because revised Section 740.13(c)(5) provides an adequate process for Federal land management agency permit review and consultation.

One commenter stated that proposed Section 740.13(c)(5) violates section 7(c) of the Federal Coal Leasing Amendments Act by deleting the Forest Service's authority to consent to (not just simply review) permits.

OSM disagrees with the commenter. Section 7(c) of the Federal Coal Leasing Amendments Act requires: (1) The Secretary's approval of an operation and reclamation plan prior to an operator taking any action on a leasehold which might cause a significant disturbance and (2) the consent of any other Federal agency having jurisdiction over the land involved. The Mineral Leasing Act and its subsequent amendments under the Federal Coal Leasing Amendments Act apply to the approval of mining plans for operations involving leased Federal coal, rather than to all SMCRA permits. Since revised Section 740.13(c)(4) applies only to the SMCRA permit and since there are no consent requirements under SMCRA, OSM cannot require the consent of the Federal land management agency with respect to the SMCRA permit; consent of other Federal agencies with respect to the mining plan, however, is provided under revised section 746.13(d).

However, OSM recognizes the right of Federal land management agencies to review and comment on permit applications and to have their comments included in the record of permit decisions with respect to operations on Federal lands within their jurisdiction. This is provided under section 702(b) of SMCRA, which states that --

Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

The right of Federal land management agencies to have their comments included in the record of permit decisions is provided for under revised Section 740.13(c)(5) as discussed below.

Revised Section 740.13(c)(5), "Consultation with other Federal agencies," which corresponds with previous Section 741.21(a)(1), requires that decisions on permits for operations on Federal lands be made after consultation with the Federal land management agency or BLM, as applicable. As noted above, OSM has modified proposed Section 740.13(c)(6) to require the regulatory authority to include the comments of the Federal land management agency in the record of decisions regarding the permit application. The remainder of previous Section 741.21(a)(1) and (2), which concerned the review of permit applications, has been removed because similar requirements will be included in the applicable regulatory program.

OSM is adopting, as proposed, revised Section 740.13(c)(6), "Permit processing schedule," which revises previous Section 741.21(a)(3) by adopting the schedule for processing permit applications which is included in the applicable regulatory program. Revised Section 740.13(c)(6) recognizes, however, that, with respect to permit applications for mining on Federal lands, it may not always be possible to meet the schedules of the applicable regulatory programs due to the numerous other Federal laws and regulations with which the Department must comply. Thus, this provision allows, where necessary, a reasonable extension of the schedule.

As proposed, OSM is deleting previous Section 741.21(a)(4), "Issuance of decision," because similar requirements will be included in the regulatory program.

Revised Section 740.13(c)(7), "Determination of operator compliance with the Act," retains in full the requirements of previous Section 741.21(b) that OSM determine whether the operator is in violation of laws and regulations pertaining to air or water environmental protection prior to issuance of a permit. OSM's intent in proposing to retain this requirement was to ensure that OSM determinations made pursuant to this provision are subject to Federal, rather than State, administrative appeals. Final revised Section 740.13(c)(7) refers only to the Federal administrative review of such determinations, because the other requirements of previous Section 741.21(b) must be included in the applicable regulatory program.

Revised Section 740.13(c)(8), "Administrative review of decisions on permit applications," retains the requirements of previous Section 741.21(a)(5) that permit decisions by OSM on Federal lands be subject to Federal administrative appeals.

Several commenters suggested that OSM clarify that the administrative review of decisions on permit applications under cooperative agreements will be subject to the State administrative review process.

OSM agrees with these commenters' suggestion and has added a sentence to revised Section 740.13(c)(8) stating that "[w]here the State is the regulatory authority under a cooperative agreement, the final decision on a permit application is subject to administrative review as provided under the approved State program."

Revised Section 740.13(c)(9), "Bonds and insurance required for issuance of permits," continues, with minor revisions, the requirement of previous Section 741.22 that an applicant/permittee must file with the regulatory authority, a performance bond, proof of liability insurance and a Federal lessee protection bond.

Previous Section 741.23, "Renewal of permits," provided for successive renewal of permits for areas within the boundaries of an approved permit, provided such renewals do not extend beyond the period allowed for diligent development under the Mineral Leasing Act. OSM has removed this section because provisions for renewal of permits will be included in the applicable regulatory program, while compliance with all of the requirements of the Mineral Leasing Act will be ensured elsewhere in these rules. See revised Section 740.13(c)(1).

One commenter stated that deletion of previous Section 741.23 would be improper because it would make unenforceable the restriction against permit renewals encompassing land beyond previously permitted boundaries. The commenter stated that this restriction must be explicit in the Federal lands program, and that its enforcement cannot depend upon the good will of the States, particularly as the restriction affects Federal lands.

OSM disagrees with the commenter. The Act and any applicable regulatory program require that extension to the area covered by a permit, except for incidental boundary changes, must be made by application for a new permit. See section 511(a)(3) of the Act.

Previous Section 741.24 (a) through (c), which concerned the review of approved permits and of permit revisions, have been removed as proposed, because counterpart provisions must be included in each regulatory program.

SECTION 740.13(d) - REVIEW OF PERMIT REVISIONS.

OSM is adopting, as proposed, revised Section 740.13(d), "Review of permit revisions," which revises previous Section 741.24(d) to provide that, where the State is the regulatory authority, it must inform OSM of each request for a permit revision with respect to operations on lands containing leased Federal coal. OSM will review each permit revision in consultation with BLM and the Federal land management agency, as appropriate, to determine whether the revision constitutes a "mining plan modification" requiring Secretarial approval under the criteria in revised Section 746.18.

One commenter stated that proposed Section 740.13(d)(1) might be better placed in proposed Part 746, since proposed Section 740.13(d)(1) relates to actions that affect the mining plan.

OSM has rejected this comment because modifications of a mining plan originate primarily through changes occurring during the term of an approved permit and within the boundaries of an approved permit area. Revised Section 740.13(d)(1) will provide the necessary bridge between actions on the permit and any resulting requirement for corresponding actions on the mining plan.

Several commenters stated that OSM should clarify further how it intends to handle permit revisions on Federal lands. The commenters suggested that proposed Section 740.13(d)(1) should be limited to lands containing leased Federal coal and those permit revisions which may require Secretarial review as a mining plan modification under revised Section 746.18(d). One of the commenters stated this would facilitate the permit revision process and cut down on required consultations.

OSM has accepted these suggestions and has modified proposed Section 740.13(d) to limit its applicability to lands containing leased Federal coal. However, OSM has added a new Section 740.13(d)(3) requiring that the regulatory authority consult with the Federal land management agency to determine whether any permit revision will adversely affect other Federal resources, and whether the revision is consistent with that agency's land use plans. This will ensure that the Federal land management agency is given an opportunity to review and comment on decisions that affect its interests.

One commenter stated that OSM should clarify OSM's classifications for revisions. Specifically, the commenter asked (1) whether the regulatory authority needed the Secretary's concurrence on revisions determined to constitute mining plan modifications and (2) how the Secretary's review will correspond to the regulatory authority's time frame for review.

Revised Section 740.13 does not provide specific criteria for what constitutes a mining plan modification because this is specifically defined in revised Section 746.18(d). If the permit revision would also constitute a modification of the mining plan, then the Secretary must issue a new approval or disapproval for the mining plan modification in accordance with the Mineral Leasing Act. With respect to the Secretary's time schedule for processing mining plan modifications, OSM anticipates that the schedule will correlate with the time frame and procedures used for the initial review of mining plan, since the same procedures must be followed.

SECTION 740.13(e) - TRANSFER, ASSIGNMENT OR SALE OF RIGHTS.

As proposed, previous Section 741.25(a) has been deleted because a counterpart provision must be included in each regulatory program.

Previous Section 741.25(d), which required the Director to authorize the Regional Director to grant the application if he or she approves the transfer, sale or assignment, has also been deleted. This provision was consistent with OSM's reorganization, as discussed earlier in this notice.

Revised Section 740.13(e), "Transfer, assignment or sale of rights," corresponds to previous Section 741.25 (c) and (e). Revised Section 740.13(e)(1) requires consultation with Federal land management agencies and BLM prior to the regulatory authority approving applications for transfer, assignment or sale of rights granted under a permit, while

previous Section 741.25(c) required the concurrence of these agencies. OSM believes that consultation, not concurrence, is sufficient. Revised Section 740.13(e)(2) continues the requirement of previous Section 741.25(e) that approval of a transfer, assignment or sale of rights granted under a permit shall not be construed to constitute a transfer or assignment of leasehold interests.

SECTION 740.13(f) - SUSPENSION OR REVOCATION OF PERMITS.

Revised Section 740.13(f), "Suspension or revocation of permits," continues the requirements of previous Section 741.26 with regard to the suspension or revocation of permits. The words "suspension" has been added to the title to more precisely reflect its subject. In response to a commenter, a sentence has been added to revised Section 740.13(f)(2) to clarify that this section does not release the Federal lessee from any diligent development or continued operation requirements of 30 CFR Part 211.

One commenter stated that the applicability of proposed Section 740.13(f)(2) should be limited to those lands containing leased Federal coal.

OSM has accepted this comment and has modified proposed Section 740.13(f)(2) by inserting the phrase "containing leased Federal coal" after the phrase "Federal lands."

Another commenter stated that proposed Section 740.13(f)(2) might be better placed in proposed Part 746, since proposed Part 746 deals with requirements of the Mineral Leasing Act for lands containing leased Federal coal.

OSM rejected this comment, preferring to retain revised Section 740.13(f)(2) as proposed because its purpose is directed specifically at actions regarding the permit rather than at the mining plan.

SECTION 740.15 - BONDS ON FEDERAL LANDS.

As proposed, those portions of previous Part 742 that must be included in any regulatory program have been removed, while those that are unique to Federal lands have been incorporated into revised Section 740.15. Persons subject to the requirements for bonding on Federal lands must comply with both the applicable regulatory program and the additional requirements of revised Section 740.15.

OSM has renumbered previous Part 742 as revised Section 740.15 and deleted the term "liability insurance" from the title because requirements for liability insurance must be included in the applicable regulatory program.

As proposed, previous Sections 742.1 and 742.4 have been removed.

OSM has moved the definitions of "Federal lease bond" and "Federal lessee protection bond" to revised Section 740.5 in order to group all definitions in Subchapter D in the same section.

SECTION 740.15(a) - FEDERAL LEASE BONDS.

As proposed, OSM has deleted the first sentence of previous Section 742.11(a), which stated that "[A]ll operators on any Federal lease shall have a Federal lease bond." This is already a requirement of 43 CFR Part 3474, making it superfluous here. In addition, the reference to 43 CFR Part 3504 in previous Section 742.11(a) has been changed in revised Section 740.15(a) to 43 CFR Part 3474, as proposed, to reflect the current regulations governing lease bonds for leased Federal coal. With minor editorial revisions, the remainder of previous Section 742.11(a) and all of previous Section 742.11(b) have been retained under revised Section 740.15(a).

As proposed, previous Section 742.11(c) has been removed to conform to the regulations of the Bureau of Land Management, at 43 CFR Part 3400, which do not require that a lease bond include a performance bond.

SECTION 740.15(b) - PERFORMANCE BONDS.

As proposed, previous Section 742.12(a), which provided that persons conducting surface coal mining and reclamation operations on Federal lands shall comply with the performance bond requirements of 30 CFR 800-808, has been removed because the applicable regulatory program must contain a similar requirement.

One commenter expressed concern that OSM, by removing previous Section 742.12(a), was deleting the regulation concerning the posting of a performance bond. The commenter stated that, if Section 740.15(c)(4) were to stand as proposed, there may not be sufficient monetary incentive for the operator to complete reclamation, or sufficient bond resources for the State to complete reclamation if the operator does not do so.

OSM is not deleting the performance bond requirements as stated by the commenter. The applicable regulatory program must include performance bond requirements in accordance with the Act and those requirements apply on Federal lands.

Previous Section 742.12(b) has been renumbered as Section 740.15(b) and revised to provide that the performance bond required for operations on Federal lands shall be payable to the United States and, where a cooperative agreement is in force, the State. Thus, in the absence of a cooperative agreement, the performance bond will be payable only to the United States; where the Department and the State have entered into a cooperative agreement, the performance bond will be payable to both the United States and the State. OSM considered requiring that the performance bond be payable only to the State where the State is the regulatory authority under a cooperative agreement, but rejected this option because of the need to ensure that protection for Federal lands is continued if the cooperative agreement is suspended or terminated and OSM becomes the regulatory authority.

One commenter stated that it is not clear under proposed Section 740.15(b) that the bond must be payable to both the State and the United States (as the preamble says) under a cooperative agreement.

OSM agrees with the commenter that the proposed wording was ambiguous and is modifying proposed Section 740.15(b) to clarify that where the State is the regulatory authority, the performance bond shall be payable to both the United States and the State. Where OSM is the regulatory authority, the bond will be payable only to the United States.

Several commenters stated that the performance bond should be payable only to States under cooperative agreements, because having the bond payable to the United States as well complicates the release and forfeiture of the bond.

As stated in the proposed rules, OSM must ensure that the interests of the Federal government are protected, particularly in the event of an interruption in the effectiveness of the cooperative agreement with the State. OSM does not believe the potential complications described by the commenters outweigh OSM's obligation to ensure protection of the Federal interests.

SECTION 740.15(c) - FEDERAL LESSEE PROTECTION BONDS.

As proposed, revised Section 740.15(c) continues the provisions of previous Section 742.13.

One commenter suggested that proposed Section 740.15(c)(1) should be revised to clarify that the consent requirement is not intended for a permit issued and authorized by the United States Department of Agriculture, Forest Service. The commenter pointed out that permits issued by the Forest Service for uses of the surface for purposes other than coal mining operations do not carry the right of transfer, sale or consent to other uses. These rights are retained by the Forest Service.

OSM has accepted this comment and is modifying proposed Section 740.15(c)(1) by adding a sentence at the end of this section stating that it does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of transfer, sale or consent to other uses.

Previous Sections 742.14, 742.15, 742.16, 742.17, and 742.19 have been removed, as proposed, since similar requirements will be included in the applicable regulatory program.

SECTION 740.15(d) - RELEASE OF BONDS.

As proposed, revised Section 740.15(d)(1) and (2) retain, with minor editorial revisions for clarity, the provisions of previous Section 742.18(a), (c), and (d).

Previous Section 742.18(b) has been removed because similar requirements will be included in each regulatory program.

One commenter suggested that the criteria for Federal lease bond release should be stated in Section 740.15(d)(1).

OSM has rejected this comment because the Bureau of Land Management is responsible for the release of Federal lease bonds under the provisions of 43 CFR Part 3400 and 30 CFR Part 211, and OSM considers it unnecessary to list those requirements under revised Section 740.15(d)(1). As discussed below, however, these requirements are referenced in revised Section 740.15(d)(1).

One commenter stated that, because reclamation of a mine is not considered when establishing a lease bond, concurrence from OSM (with respect to reclamation) is not necessary when releasing it. Thus, the commenter suggested that Section 740.15(d)(1) be rewritten to delete OSM.

OSM has accepted the commenter's suggestion and has deleted from Section 740.15(d)(1) the requirement that OSM concur in the release of the lease bond as well as the word "reclamation" since the lease bond is not concerned with SMCRA reclamation requirements.

Two commenters stated that Section 740.15(d)(2) is unnecessary inasmuch as notice of the release of the bond is required by the Act.

OSM agrees with the commenter and is deleting proposed Section 740.15(d)(2). The applicable regulatory program must provide for public notice and an opportunity for a hearing by persons with a valid interest which might be adversely affected by release of the bond. See section 519 of the Act, *30 U.S.C. 1269.*

PROPOSED SECTION 740.15(d)(3) HAS BEEN RENUMBERED AS SECTION 740.15(d)(2).

Another commenter stated that proposed Section 740.15(d)(2) is unclear as to whether Federal concurrence in State regulatory authority performance bond release is required. OSM has added a new section 740.15(d)(3) to clarify that Federal concurrence is required in State regulatory performance bond release only when the surface coal mining and reclamation operations are subject to an approved mining plan. OSM believes Federal concurrence is appropriate in such situations to ensure that reclamation is completed consistent with the approved mining plan for non-SMCRA matters.

SECTION 740.15 - INSPECTION, ENFORCEMENT AND CIVIL PENALTIES.

As proposed, the requirements of previous Part 743 with respect to inspection, enforcement and civil penalties on Federal land have been revised and incorporated under revised Section 740.17.

PREVIOUS SECTION 743.1, "Scope," and Section 743.2, "Objective," have been removed.

Previous Section 743.4, "Responsibilities," has also been removed because responsibilities for inspection, enforcement and civil penalties on Federal lands are adequately described under revised Section 740.4

SECTION 740.17(a) - GENERAL REQUIREMENTS.

As proposed, OSM has retitled previous Section 743.11 as "General requirements" and renumbered it as revised Section 740.17(a). Revised Section 740.17(a)(1) provides that, where OSM is the regulatory authority, 30 CFR Parts 840, 842, 843 and 845, rather than the requirements of the applicable regulatory program shall govern inspection, enforcement and civil penalty activities with respect to surface coal mining and reclamation operations on lands subject to Subchapter D. This is a departure from the overall thrust of the revisions of Subchapter D, which is to apply uniform substantive and procedural requirements on both Federal and non-Federal lands. OSM believes that utilization of its own inspection, enforcement and civil penalty provisions, which are familiar to its inspection and enforcement staff, is more appropriate than using different State inspection, enforcement and civil penalties provisions in each State.

Revised Section 740.17(a)(2) provides that, where the State is the regulatory authority under a cooperative agreement, the State program shall govern its inspection, enforcement and civil penalty activities on lands subject to Subchapter D, while OSM will utilize the requirements of 30 CFR Parts 842, 843 and 845 in its oversight role.

Revised Section 740.17(a)(3) limits OSM's inspection, enforcement and civil penalty authority with respect to exploration on Federal lands to lands not covered by 30 CFR Part 211. These lands include Federal lands entrusted to or managed by the Tennessee Valley Authority and Federal lands inside the permit area after the commencement of surface coal mining operations. This will eliminate overlap and duplication between the requirements of Subchapter D and 30 CFR Part 211. Revised 30 CFR Part 211 contains specific requirements for the conduct of inspection, enforcement and civil penalty activities with respect to exploration on Federal lands and encompasses the requirements of both the Mineral Leasing Act and SMCRA. *47 FR 33714* (July 30, 1982). OSM, therefore, will not assert overlapping authority of its own in this area.

One commenter stated that proposed Section 740.17 (a)(2) and (a)(3) are improper because OSM has specific inspection and enforcement duties on Federal lands in addition to its oversight responsibilities, and because regardless of whether the Federal lands overlie non-leased or leased Federal coal, OSM is the regulatory authority under sections 512 and 523 of the Act.

OSM disagrees with the commenter. As stated under the discussion of revised Section 740.4(b)(5), the Secretary believes that delegation to States with cooperative agreements of the responsibility for inspection and enforcement on Federal lands is consistent with section 523(c) of the Act. Since States with cooperative agreements will have regulatory programs that the Secretary has approved as consistent with the Act, the Secretary believes that it is the State program that should be relied upon for implementation of the Act's inspection and enforcement requirements. The Secretary's oversight will ensure that the State program is properly applied to surface coal mining and reclamation operations on both Federal and non-Federal lands in all such States.

SECTION 740.17(b) - RIGHT OF ENTRY.

As proposed, previous Section 743.11 (a), (b) and (c), with minor revisions, continue under revised Section 740.17(b), entitled "Right of entry," as revised Section 740.17(b) (1), (2) and (3).

SECTION 740.17(c) - INSPECTIONS.

OSM has adopted the proposed deletion of the first sentence of previous Section 743.12(a), which required that inspections be conducted under 30 CFR Parts 840 and 842, because revised Section 740.17(a) requires inspections to be conducted according to 30 CFR Parts 840 and 842 or their regulatory program counterparts. With revisions, the remaining portion of previous Section 743.12(a) will be incorporated into revised Section 740.17(c), as proposed. Revised Section 740.17(c) also incorporates the requirements of the first sentence of previous Section 743.12(b)(1) with respect to coordination by OSM of inspections by Federal agencies. This responds to a commenter who stated that OSM should not delete the requirement in previous Section 743.12(b)(1) giving OSM authority to coordinate inspections, since this provision is necessary to avoid unnecessary sequential Federal inspections, and assures that OSM remains aware of an operator's performance under other Federal statutes that may bear on the operator's performance under SMCRA. The remaining portion of previous Section 743.12(b)(1) has been deleted, as proposed.

As proposed, previous Section 743.12(b)(2) has been deleted because similar requirements are included in 30 CFR Part 842 with respect to inspections by OSM, and the State regulatory program with respect to inspections by the State regulatory authority under a cooperative agreement.

Previous Section 743.13 has been removed, as proposed, because the requirements of this section are provided for under revised Section 740.17(a).

SECTION 740.19 - PERFORMANCE STANDARDS.

As proposed, those portions of previous Part 744 that must be included in any regulatory program have been removed. Revised Section 740.19, entitled "Performance standards," retains those requirements of previous Part 744 that are unique to Federal lands. Persons conducting surface coal mining and reclamation operations on Federal lands will be subject to the performance standards of the applicable regulatory program and the additional requirements of revised Section 740.19.

As proposed, PREVIOUS SECTION 744.1, "Scope," has been removed.

Previous Section 744.11, which concerned performance standards for exploration, has been removed, as proposed, because the Department's regulations at 30 CFR Part 211 provide performance standards for exploration on Federal lands subject to the requirements of the Mineral Leasing Act and because the performance standards of the applicable regulatory program will be applied to exploration on other Federal lands.

SECTION 740.19(a) - OPERATIONS AND RECLAMATION.

OSM has adopted revised Section 740.19(a)(1), which requires surface coal mining and reclamation operations on Federal lands to comply with the performance standards of the applicable regulatory program, rather than with the performance standards of 30 CFR Chapter VII, Subchapter K, as required by previous Section 74.12(a). Thus, a single set of performance standards will be applicable both on and off Federal lands within a State whether or not a cooperative agreement is in force, and operators of mines containing mixed Federal and non-Federal lands will not be required to comply with two different sets of performance standards.

Except for the addition of the reference to the 30 CFR Part 211 regulations, OSM has adopted, as proposed, revised Section 740.19(a)(2), which corresponds to previous Section 744.12(a). Revised Section 740.19(a)(2) requires that surface coal mining and reclamation operations on lands containing leased Federal coal be conducted in accordance with the terms, conditions and stipulations of the lease issued under the Mineral Leasing Act and its implementing regulations at 30 CFR Part 211, and the mining plan. This responds to one commenter who stated that the previous language in Section 744.12(a) should be retained to give notice to operators on Federal lands of the separate MLA requirements found in 30 CFR Part 211 which are not part of the Secretary's regulations implementing section 523 of the Act.

Another commenter stated that, as worded, proposed Section 740.19(a) conveyed the impression that the mining plan requirement is not a part of the Mineral Leasing Act and suggested rewording Section 740.19(a) to clarify that the mining plan requirement is part of the MLA.

OSM has rejected this comment because the term "mining plan" has been adequately defined under revised Section 740.5 to be the plan for mining leased Federal coal required by the Mineral Leasing Act and no further elaboration is needed under Section 740.19(a).

As proposed, previous Section 744.12(b) has been removed.

One commenter opposed the deletion of previous Section 744.12(b), because it is the responsibility of the Secretary to reconcile the mineral utilization and conservation dictates of section 515(b)(1) of the Act and the diligent development requirements of the Mineral Leasing Act, a function which the State cannot perform. Therefore, the commenter stated, it is improper to rely on a State regulatory authority for performance of this function.

OSM sees no inherent conflict in allowing State regulatory authorities to implement the requirements of section 515(b)(1) of the Act where leased Federal coal is involved. Conflicts that may arise in specific cases will be resolved in the mining plan approval process.

As proposed, previous Section 744.13(a), which concerned temporary abandonment of operations, has been removed because similar provisions must be included in each regulatory program.

SECTION 740.19(B) - COMPLETION OF OPERATIONS AND ABANDONMENT.

As proposed, previous Section 744.13(b), which described the requirements for permanent abandonment of coal exploration and surface coal mining and reclamation operations, has been removed. The Department's regulations at 30 CFR Part 211 cover abandonment of exploration activities on lands containing leased Federal coal. Abandonment of exploration activities on other Federal lands will be subject to the requirements of the applicable regulatory program, as will abandonment of all surface coal mining and reclamation operations subject to Subchapter D.

As proposed, previous Section 744.13(c)(2), which concerned the notice of abandonment, has been renumbered as revised Section 740.19(b)(1) and revised to require that bonds shall be released in accordance with revised Section 740.15(d).

Previous Section 744.13(d) has been removed, as proposed, because the requirements of this section will be provided under revised Section 740.15(d).

OSM has adopted proposed Section 740.19(b)(2), which pertains to cessation or abandonment of mining operations where there is a Federal lease bond, with minor modifications.

One commenter suggested that revised Section 740.19(b)(2)(ii) should not require inspections by OSM with respect to Federal lease bonds.

OSM agrees. Revised Section 740.19(b)(2)(ii) does not require OSM involvement in joint inspections to determine compliance with applicable requirements, because OSM has no responsibility for Federal lease bonds. Similarly, the reference to compliance with the requirements of the Federal lands program and the permit has been replaced with a reference to 30 CFR Part 211, because that is where the requirements applicable to Federal lease bonds are contained.

OSM proposed to delete previous Section 744.13(e), which concerns public participation in the approval of abandonment and release of performance bonds because each regulatory program must contain counterpart requirements.

One commenter suggested that previous Section 744.13(e) should be retained, because OSM must comply with the requirements of 30 CFR Part 807, which will not be replicated in a State program, and because States are not likely to have appropriate hearing procedures for bond release.

OSM partially agrees with the commenter and has retained a modified version of previous Section 744.13(e). Approved State programs must contain standards and procedures for the approval of abandonment and release of performance bonds that are consistent with section 519 of the Act, which 30 CFR Part 807 implements. Thus, the standards and procedures of the State program concerning the approval of abandonment and release of performance bonds will apply to surface coal mining and reclamation operations on Federal lands, which is consistent with OSM's intent to apply the requirements of the applicable regulatory program to mining on Federal lands to the extent possible. However, where OSM is the regulatory authority, OSM cannot apply the State program requirements for public hearings. Such hearings by OSM must be in accordance with *5 U.S.C. 554* and the rules of the Department's Office of Hearings and Appeals at 43 CFR Part 4. Accordingly, OSM is adopting revised Section 740.19(c)(3) to provide that, where OSM is the regulatory authority, it shall conduct public hearings held on final abandonment and release of performance bonds in accordance with *5 U.S.C. 554* and the rules of the Department's Office of Hearings and Appeals at 30 CFR Part 4. Where the State is the regulatory authority, the State will use the administrative hearings procedures of its approved State program.

PART 745 -- STATE-FEDERAL COOPERATIVE AGREEMENTS

SECTION 745.1 - SCOPE.

As proposed, previous Section 745.1 has been retained with minor revisions for clarity.

Previous Section 745.2, "Objectives," and Section 745.4, "Responsibilities," have been removed, as proposed.

One commenter stated that Section 745.4 should not be deleted to the extent that it describes the respective duties of the Secretary, OSM, and the State regulatory authority under cooperative agreements on Federal lands.

OSM has rejected this comment because the responsibilities of the Secretary, OSM, and the State regulatory authority are adequately described under revised Section 740.4.

SECTION 745.10 - INFORMATION COLLECTION.

Section 745.10 corresponds with the "Note" at the beginning of previous Part 745, which indentifies the OMB approval number for the information collection requirements of this Part. OSM has deleted this "Note" and is codifying OMB's approval of the information collection requirements of Part 745 in revised Section 745.10.

SECTION 745.11 - APPLICATION AND AGREEMENT.

As proposed, revised Section 745.11(a) replaces the phrase "which are being conducted under the terms of a Federal lease" in previous Section 745.11(a) with the phrase "on Federal lands." This change makes clear that cooperative agreements apply to all Federal lands, not just lands containing leased Federal coal.

As proposed, previous Section 745.11(b) (1) through (6), which concerned specific information that must be submitted in a State's request for a cooperative agreement, will be removed and replaced with revised Section 745.11(b)(1). These subsections have been deleted because the same information can be obtained from the State program submitted to the Office by the State for approval of its State program or from information available elsewhere in the Department. Moreover, revised Section 745.11(b)(1) provides a direct correlation between information needed to support an application for a cooperative agreement and the findings required under revised Section 745.11(f) through cross-referencing that section. With minor revisions for clarity, previous Section 745.11(b) (7) and (8) have been redesignated as revised Section 745.11(b) (2) and (3); no change in effect is intended.

As proposed, previous Section 745.11(c) has been revised to eliminate the requirement that the text of each cooperative agreement be published as a proposed rule in the exact terms submitted by the State. This will allow publication of either the text as submitted by the State or of a subsequent version resulting from discussions between OSM and the State. The requirement that a notice of the request and a summary of the terms of the agreement be published in newspapers in the State will be continued.

One commenter stated that proposed Section 745.11(c) should not eliminate the requirement that cooperative agreements be published in the Federal Register as submitted by the State, since this initiates the rulemaking process and with it the procedural protection afforded by the Administrative Procedure Act, such as the prohibition against ex parte communications.

OSM disagrees with the commenter that receipt of cooperative agreements from the State initiates the rulemaking process. OSM has found that when States initially submit proposed agreements, in addition to substantive changes that may be required, there are typically numerous editorial and format changes required before the document can be published in the Federal Register. Making these changes before publishing the document alleviates minor problems so that substantive changes can be dealt with more effectively upon publication of the proposed agreement as a proposed rule. Further, OSM does not consider discussions of these changes to violate the Administrative Procedure Act, since they occur prior to publication of the proposed rule in the Federal Register.

As proposed, the requirement of previous Section 745.11(c)(1), that the date, time and place of the public hearing be included in the rule, has been moved to the end of revised Section 745.11(d). As proposed, previous Section 745.11(c)(2) has been redesignated as revised Section 745.11(c)(1), no change in effect is intended.

As proposed, previous Section 745.11(c)(3) has been redesignated as Section 745.11(c)(2) and revised to reduce the period for the public to submit written comments on the State's request for a cooperative agreement from 60 to 30 days following its publication in the Federal Register as a proposed rule. This will greatly expedite the rulemaking process for adoption of cooperative agreements. One commenter stated that the time period for public participation should not be shortened. OSM believes, however, that the shortened comment period will still provide an adequate opportunity for public comment, a belief based upon the fact that OSM has received relatively few comments on past cooperative agreements under the longer comment period.

As proposed, previous Section 745.11(d) has been revised to eliminate the requirement that public hearings on the State's request for a cooperative agreement be held not less than 30 days after publication of the rules announcing such request. Instead, revised Section 745.11(d) requires that a public hearing be held within the comment period and that notice of such hearing be published in the Federal Register not less than 15 days prior to the date of the hearing. Such notice will, therefore, be required at least 15 days prior to the close of the comment period. One commenter opposed this shortened notice of hearing requirement. OSM believes that fifteen days is sufficient notice. Moreover, allowing the notice to be given after publication of the proposed cooperative agreement is justified by the difficulty of establishing a precise date and location for the hearing at the time the Federal Register notice is developed.

As proposed, previous Sections 745.11 (e) through (g) have been retained with minor editorial revisions.

SECTION 745.12 - TERMS

As proposed, OSM has revised previous Section 745.12(a) to delete the phrase " and describing each applicable provision of the State's applicable statutes, regulations and policies" because in practice it has been found cumbersome and unproductive to describe these provisions in detail. An assessment of these provisions is required as part of OSM's State program approval process and need not be repeated in the cooperative agreement. However, any part of the State program not applicable on Federal lands will be identified in the cooperative agreement.

As proposed, previous Section 745.12(b) has been revised by inserting the phrase "but not limited to" after the word "including" in order to clarify that the description of the powers and authority reserved by the Secretary under revised Section 745.13 is not exhaustive.

As proposed, OSM has redesignated previous Section 745.12(c) as revised Section 745.12(d) with minor editorial revisions.

Revised Section 745.12(c) requires that the cooperative agreement specify how the requirements of Subchapter D will be applied to surface coal mining and reclamation operations on Federal lands to minimize overlap and duplication. Under revised Section 745.12(c), the cooperative agreement will specify which requirements in Subchapter D may be assumed by the State, which are reserved to the Department and which may be administered jointly. The Secretary intends to allow States to assume full responsibility for delegable requirements. Further, the Secretary believes that States can and should be relied upon to assist in carrying out non-delegable responsibilities. For example, States cannot assume responsibility for ensuring compliance with the National Environmental Policy Act, but can participate in preparing the supporting environmental documents and analyses. See 40 CFR 1506.2. The Secretary believes that certain other non-delegable requirements of this Subchapter may be complied with through joint participation by the State and the Department.

As proposed, previous Section 745.12 (d) and (e) have been redesignated as revised Section 745.12 (e) and (f), respectively; no changes in their effects are intended.

As proposed, previous Section 745.12(f), which provided that the cooperative agreement establish the amount of, and collection procedures for, permit application fees on Federal lands, has been removed, since the permit fee

requirements of the State regulatory program will be applicable on Federal lands under revised Section 740.13(b)(1).

One commenter stated that previous Section 745.12(f) should remain in effect because provisions for fee collection on Federal lands should be contained in the cooperative agreement so that they can be enforced under that agreement by the Secretary, not through the State program.

OSM disagrees with the commenter. Establishment and collection of permit application fees is a regulatory matter properly delegable to a State under a SMCRA section 523(c) cooperative agreement.

As proposed, revised Section 745.12(g)(1) requires that under the cooperative agreement the State regulatory authority must make available to OSM information on any action taken regarding a permit application for surface coal mining and reclamation operations on Federal lands. This will enable OSM to ensure compliance with all legal and procedural requirements for which OSM is responsible. See revised Section 740.4(b). As proposed, revised Section 745.12(g)(2) requires that each cooperative agreement obligate the State regulatory authority to provide OSM with, at a minimum, a written finding indicating that a permit application is in compliance with the terms of the State program and a technical analysis of the permit application that will assist OSM in meeting its responsibilities under applicable Federal laws and regulations other than SMCRA. OSM will prescribe the content and format for the information needed to satisfy the requirements of revised Section 745.12(g)(2) in order to establish a degree of uniformity among the various States with cooperative agreements. The addition of Section 745.12(g)(2) formalizes a provision which has been included in the terms of all cooperative agreements either already approved or currently being negotiated pursuant to the permanent program regulations. These agreements now require that the State regulatory authority, upon completion of its review of a permit application, provide OSM with documentation to assist OSM in meeting its non-delegable responsibilities under NEPA and other Federal laws and regulations other than SMCRA.

One commenter stated that the requirements of proposed Section 745.12(g)(2) should be limited to those lands containing leased Federal coal.

OSM agrees with the commenter and has revised Section 745.12(g)(2) accordingly. This section ensures that the Secretary fulfills all requirements under other Federal laws and regulations that may be triggered by the Secretary's approval of the mining plan.

Another commenter suggested that Section 745.12(g)(2) should read, "provide the Office, in the form specified by the Office in consultation with the State, with written findings * * *."

OSM has accepted this comment and incorporated the language suggested by the commenter into revised Section 745.12(g)(2).

SECTION 745.13 - AUTHORITY RESERVED TO THE SECRETARY.

The listing of requirements that are specifically reserved to the Secretary under previous Section 745.13 has been revised and expanded to include requirements for (1) evaluating the State's administration and enforcement of the State program and implementation of the cooperative agreement on Federal lands; (2) complying with the inspection, enforcement and civil penalty requirements of 30 CFR Parts 842 and 843, except as provided under Section 740.4(c)(5) of this Subchapter, (3) determining valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under section 522(e)(1) or (2) of the Act, and (4) as discussed earlier, compatibility determinations under section 522(e)(2) of the Act. The specific references in proposed Section 745.13(m) and (o) to Endangered Species Act and National Historic Preservation Act responsibilities, respectively, have been deleted. In their place, revised Section 745.13(b) now refers to responsibilities under Federal laws and regulations other than SMCRA.

One commenter stated that proposed Section 745.13(c) should be modified to allow the State regulatory authority to approve post-mining land uses where the surface is privately- or State-owned and the coal is Federally-owned. Another commenter stated that proposed Section 745.13(k) should also be modified in this manner with respect to the development of land use plans.

OSM agrees with these commenters and is modifying the language proposed for Section 745.13(c) and (k) to allow delegation of those functions where the surface estate is not Federally-owned.

One commenter stated that proposed Section 745.13 should be amended to include the requirements of section 176(c) of the Clean Air Act. Section 176(c) provides that:

No department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. * * * The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

OSM agrees with the commenter that compliance with section 176(c) of the Clean Air Act is a responsibility of the Secretary; however, specific reference to this requirement is unnecessary because it is encompassed by revised Section 745.13(b).

SECTIONS 745.14, 745.15 AND 745.16.

As proposed, previous Sections 745.14, 745.15 and 745.16 have been retained.

One commenter stated that OSM should authorize under Section 745.14 a fast-track procedure which avoids the cumbersome rulemaking requirements of Section 745.11 for amendments to a cooperative agreement that merely bring the agreement in line with the revised Federal lands regulations.

OSM has declined to adopt the procedures suggested by the commenters. OSM believes that any changes in an approved cooperative agreement should be made through rulemaking to provide the public with an opportunity to comment on those changes. Further, OSM believes it has already substantially streamlined the requirements for amending cooperative agreement through the changes being adopted under this rulemaking.

PART 746 -- REVIEW AND APPROVAL OF MINING PLANS

As proposed, Part 746, which has no counterpart in previous regulations, sets forth the requirements for review and approval of mining plans.

SECTION 746.1 - SCOPE.

As proposed, Section 746.1 describes the coverage of these regulations and the requirements for review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal.

SECTION 746.10 - INFORMATION COLLECTION.

Section 746.10 corresponds to the "Note" at the beginning of previous 30 CFR Part 741 with respect to mining plans and identifies the OMB approval number for the relevant information collection requirements of that part. OSM has deleted the "Note" and is codifying OMB's revised approval of the information collection requirements of previous Part 741 as it relates to mining plans in Section 746.10.

SECTION 746.11 - GENERAL REQUIREMENTS.

As proposed, Section 746.11(a) provides that surface coal mining and reclamation operations on lands containing leased Federal coal will require approval of a mining plan by the Secretary. While the processing of a permit may be undertaken as a separate action by the regulatory authority, the Secretary must decide whether surface coal mining can occur on such lands before mining may commence.

One commenter stated that OSM should neither (1) restrict the Secretary's authority to approve mining plans under section 523 to lands containing leased Federal coal, nor (2) allow States with approved cooperative agreements to either issue permits for mining on Federal lands or take that action prior to Secretarial approval of the mining plan.

OSM has rejected this comment for the reasons discussed above under "Permit Application and Mining Plan Review and Approval."

As proposed, Section 746.11(b) requires that mining on lands containing leased Federal coal be conducted under an approved permit that is issued in accordance with Subchapter D and that is consistent with an approved mining plan. Where there is a cooperative agreement, the State regulatory authority will fully process a permit application in accordance with its program and, if it approves the application, issue the permit. Issuance of the permit in this circumstance will be based on the requirements of the State program and any requirements of this Subchapter that have been delegated to the State. Thus, permit issuance will be separate from approval of the mining plan by the Secretary. It is possible, though unlikely, that although the State regulatory authority has concluded that mining could be conducted within the requirements of its regulatory program, the Secretary could determine that mining cannot occur because of applicable Federal laws and regulations other than SMCRA and, therefore, disapprove the mining Plan. However, because of the close coordination and continuous communication that are necessary to properly implement the terms of a cooperative agreement, OSM expects few instances of disagreement on decisions regarding mining proposals.

SECTION 746.13 - DECISION DOCUMENT AND RECOMMENDATION ON MINING PLAN.

OSM has adopted, as proposed, Section 746.13, which provides for the preparation of a decision document by OSM to be submitted to the Secretary recommending approval, disapproval, or conditional approval of the mining plan. Section 746.13 sets forth the elements on which the decision document will be based, including, but not limited to, the permit application package, which includes the resource recovery and protection plan required by 30 CFR Part 211; information prepared in compliance with the National Environmental Policy Act; documentation assuring compliance with Federal laws, regulations and executive orders other than SMCRA; comments and recommendations or concurrences of other Federal agencies; comments of the public; the findings and recommendations of the BLM regarding compliance with the resource recovery and protection plan and other requirements of the Mineral Leasing Act and the lease; the findings and recommendations of the regulatory authority with respect to the permit application, the Act, and the State program; and the findings and recommendations of the Office with respect to the additional requirements of this subchapter.

SECTION 746.14 - APPROVAL, DISAPPROVAL OR CONDITIONAL APPROVAL OF MINING PLAN.

As proposed, Section 746.14 requires the Secretary to approve, disapprove, or conditionally approve the mining plan.

One commenter stated that the heading for proposed Section 746.14 is misleading because Secretarial action can be something other than approval.

OSM agrees with the commenter and is modifying the heading to Section 746.14 accordingly.

SECTION 746.17 - TERM OF APPROVAL.

As proposed, Section 746.17(a) will specify that each mining plan approval shall cover the operations for which a complete permit application package was submitted, unless otherwise indicated in the approval.

One commenter stated that OSM should modify proposed Sections 746.17 and 746.18 to clarify that permit renewal decisions are the sole responsibility of the regulatory authority unless the renewal proposes some change which constitutes a mining plan modification.

OSM agrees that permit renewal decisions are the responsibility of the regulatory authority and that such revisions will not require Secretarial approval unless they modify the mining plan.

As proposed Section 746.17(b) specifies that an approved mining plan remains in effect until modified, cancelled or withdrawn and is binding on any person mining under its provisions.

SECTION 746.18 - MINING PLAN MODIFICATION.

As proposed, Section 746.18(a) requires that modifications to mining plans be approved by the Secretary and Section 746.18(b) requires that such modifications be processed in accordance with Part 746.

Section 746.18(c) provides that mining operations under a permit revision for mining on land containing leased Federal coal may not commence until either OSM determines that the revision is not a mining plan modification or, if a mining plan modification is involved, the Secretary approves the modification. Section 746.18(c) is intended to make clear that it is only where a permit revision affects the basis for mining plan approval that Secretarial approval of the revision will be required. Approval of permit revisions that will not constitute a mining plan modification will be the responsibility of the regulatory authority.

OSM has adopted, as proposed, Section 746.18(d) which lists the criteria for determining when a permit revision constitutes a mining plan modification.

One commenter stated that, assuming that "term" means "stipulation" in proposed Section 746.18(d)(1), OSM should clarify the meaning of this criterion, since past practice has been to include very broad language in stipulations.

OSM has accepted this comment in part. Revised Section 746.18(d)(1) provides that any change in a permit "term, condition, or stipulation" included pursuant to Federal law or regulation other than SMCRA constitutes a mining plan modification. OSM's intent is to ensure Secretarial review of permit changes relating to laws other the SMCRA, while preserving State independence in approving permit revisions as they relate to SMCRA. OSM deems it inappropriate and unnecessary, however, to include specific revision criteria in these regulations. While some terms, conditions and stipulations are standard and are included in many approved mining plans, most are developed on a case-by-case basis, and reflect special requirements applicable only to the mining operation in question.

III. PROCEDURAL MATTERS

National Environmental Policy Act

This rule is part of the Secretary's implementation of the Federal lands program and, therefore, pursuant to section 702(d) of the Act, *30 U.S.C. 1292*(d), OSM is not required to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 *(42 U.S.C. 4332*(2)(C)).

Federal Paperwork Reduction Act

The information collection requirements in previous 30 CFR Parts 741, 742 and 745 were approved by the Office of Management and Budget (OMB) under *44 U.S.C. 3507* and assigned clearance numbers 1029-26, 1029-27 and 1029-28. This approval was identified in "notes" at the introduction to 30 CFR Parts 741, 742 and 745. OSM has deleted those "notes" and is codifying the OMB approvals under sections 740.10, 745.10 and 746.10. OSM has received OMB approval of the information collection requirements being for the following sections: 30 CFR 740.13(b), 740.13(c)(8), 740.13(e), 740.15(a), 740.15(c)(1), 740.15(d)(2), 740.15(d)(3) and 746.12. The information required by 30 CFR Parts 740, 745 and 746 will be used by the Office in the implementation of the Federal lands program required under section 523(a) of the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1273*(a). The information required by 30 CFR Parts 740, 745 and 746 is mandatory.

Executive Order 12291 and Regulatory Flexibility Act.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not require a small entity flexibility analysis under the Regulatory Flexibility Act.

It is not anticipated that the proposed revisions to Subchapter D would have any significant adverse impacts on State or Federal agencies, individual industry or consumers. Unnecessarily burdensome and counterproductive

provisions would be eliminated, modified or rewritten to provide additional flexibility, and to distinguish mandatory from discretionary requirements.

The proposed revisions to Subchapter D would not result in significant adverse effects on employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete in domestic or foreign markets. The main impact of the changes would be to provide for better coordination and cooperation among the State regulatory authority, OSM and the Geological Survey in regulating coal mining activities under a State-Federal cooperative agreement. The OSM regulations concerning State-Federal cooperative agreements would continue to require that minimum standards be met, which assures that a State may not secure a competitive advantage for its mining operators over those of another State by adopting substandard regulations.

This would be a beneficial impact on small coal mine operators, in that small operators whose operations extend to both State and Federal lands would have only one regulatory authority to deal with instead of two.

LIST OF SUBJECTS

30 CFR Part 700
Administration practice and procedure, Coal mining, Surface mining, Underground mining, Reporting requirements.

30 CFR Part 701
Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 740
Coal mining, Public lands, Mineral resources, Reporting requirements, Surface mining.

30 CFR Part 745
Coal mining, Intergovernmental relations, Public lands, Mineral resources, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 746
Coal mining, Mining plan, Public lands, Mineral resources, Reporting requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700, 701, 740, and 745 are amended, Parts 741, 742, 743 and 744 removed, and a revised Part 746 added as follows:

Dated: December 27, 1982.
Daniel N. Miller, Jr., Assistant Secretary, Energy and Minerals.

PART 700 -- GENERAL

1. Section 700.1(d) is revised to read as follows:

SECTION 700.1 - SCOPE.

* * * * *

(d) Subchapter D of this chapter identifies the procedures that apply to surface coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates by reference the requirements of the applicable regulatory program and the inspection and enforcement requirements of Subchapter L of this chapter.

* * * * *

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

2. The definition of "regulatory program" in Section 700.5 is revised to read as follows:

SECTION 700.5 - DEFINITIONS.

* * * * *

REGULATORY PROGRAM means any approved State or Federal program or, in a State with no approved State or Federal program and coal exploration and surface coal mining and reclamation operations are on Federal lands, the requirements of subchapters A, F, G, J, K, L, M, and P of this chapter.

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

3. Section 700.11(g) is revised to read as follows:

SECTION 700.11 - APPLICABILITY.

* * * * *

(g) Coal exploration on lands subject to the requirements of 30 CFR Part 211 of this title.

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

PART 701 -- PERMANENT REGULATORY PROGRAM

4. The definition of "permit" in Section 701.5 is revised to read as follows:

SECTION 701.5 - DEFINITIONS.

* * * * *

PERMIT means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the State regulatory authority under a cooperative agreement or by OSM where there is no cooperative agreement.

* * * * *

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

5. Section 701.11(b) is revised to read as follows:

SECTION 701.11 - APPLICABILITY.

* * * * *

(b) Any person who conducts surface coal mining and reclamation operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to Part 740 of this chapter. However, under conditions specified in Section 740.13(a)(3) of this chapter, a person may continue such operations under a mining plan

previously approved pursuant to Part 211 of this title or a permit issued by the State under the interim State program after 8 months after the date of approval of a State program or implementation of a Federal program.

* * * * *

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

6. Part 740 is revised to read as follows:

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

Section

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

SECTION 740.1 - SCOPE AND PURPOSE.

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

SECTION 740.4 - RESPONSIBILITIES.

(a) The Secretary is responsible for:

(1) Approval, disapproval or conditional approval of mining plans with respect to lands containing leased Federal coal and of modifications thereto, in accordance with the Mineral Leasing Act of 1920, as amended, *30 U.S.C. 181* et seq.;

(2) Execution, modification or termination of State-Federal cooperative agreements in accordance with Part 745 of this chapter; and

(3) Designation of areas of Federal lands as unsuitable for all or certain types of surface coal mining and reclamation operations, or termination of such designations, in accordance with Part 769 of this chapter.

(4) Determination of valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under section 522 (e)(1) or (2) of the Act.

(5) Determination that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining and reclamation operations on any Federal lands within the boundaries of any national forest under section 522(e)(2) of the Act.

(b) OSM is responsible for:

(1) Providing a decision document recommending to the Secretary approval, disapproval or conditional approval of mining plans and of modifications thereto;

(2) Approval of experimental practices on Federal lands;

(3) Inspection, enforcement and civil penalties with respect to surface coal mining and reclamation operations on Federal lands except as provided in paragraph (c)(5) of this section;

(4) Processing citizen requests for Federal inspections on Federal lands in accordance with Parts 842, 843 and 845 of this chapter; and

(5) Overseeing the State regulatory authority's administration and enforcement of the State program on Federal lands pursuant to the terms of any cooperative agreement.

(c) The following responsibilities of OSM may be delegated to a State regulatory authority under a cooperative agreement:

(1) Review and approval, conditional approval of disapproval or permit applications for surface coal mining and reclamation operations on Federal lands, revisions or renewals thereof, and applications for the transfer, sale or assignment of such permits;

(2) Consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations;

(3) Consultation with and obtaining the consent, as necessary, of the Bureau of Land Management with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Part 3400;

(4) Approval and release of performance bonds, liability insurance and, as applicable, Federal lessee protection bonds required for surface coal mining and reclamation operations on Federal lands. Approval and release of Federal lessee protection bonds requires the concurrence of the Federal land management agency;

(5) Responsibilities of the regulatory authority with respect to inspection, enforcement and civil penalty activities for (i) exploration operations not subject to Part 211 of this title, and (ii) surface coal mining and reclamation operations on Federal lands;

(6) Review and approval of exploration operations not subject to the requirements of Part 211 of this title; and

(7) Preparation of documentation to comply with the requirements of the National Environmental Policy Act *(42 U.S.C. 4321* et seq .), except, OSM continues to be responsible for:

(i) Determining the scope, content and format and ensuring the objectivity of NEPA compliance documents;

(ii) Making the determination of whether or not the preparation of an environmental impact statement is required.

(iii) Notifying and soliciting views of other State and Federal agencies, as appropriate, on the environmental effects of the proposed action;

(iv) Publishing and distributing draft and final NEPA compliance documents;

(v) Making policy responses to comments on draft NEPA compliance documents;

(vi) Independently evaluating NEPA compliance documents; and

(vii) Adopting NEPA compliance documents and determining Federal actions to be taken on alternatives presented in such documents.

(d) The Bureau of Land Management is responsible for:

(1) Receiving and approving exploration plans pursuant to Part 211 of this title;

(2) Inspection, enforcement and civil penalties with respect to the terms and conditions of coal exploration licenses issued pursuant to 43 CFR Part 3400;

(3) Inspection, enforcement and civil penalties with respect to the terms and conditions of exploration operations subject to Part 211 of this title;

(4) Reviewing the resource recovery and protection plan and modifications thereto, as required by Part 211 of this title and recommending to the Secretary approval, disapproval or conditional approval of the resource recovery and protection plan;

(5) Inspection, enforcement and civil penalties with respect to the recovery and protection of the coal resource as required by Part 211 of this title;

(6) Protecting mineral resources not included in the coal lease;

(7) Issuance of exploration licenses for Federal coal subject to the requirements of 43 CFR Part 3400;

(8) Issuance of leases and licenses to mine Federal coal subject to the requirements of 43 CFR Part 3400; and

(9) Issuance, readjustment, modification, termination, cancellation, and approval of transfers of Federal coal leases pursuant to the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947, as amended, *30*

U.S.C. 351 et seq.

(e) The Federal land management agency is responsible for:

(1) Determining post-mining land uses;

(2) Protection of non-mineral resources;

(3) Requiring such conditions as may be appropriate to regulate surface coal mining and reclamation operations under other provisions of law applicable to such lands under its jurisdiction; and

(4) Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mining plan approval.

SECTION 740.5 - DEFINITIONS.

(a) As used in this subchapter, the term:

AUTHORIZED OFFICER means any person authorized to take official action on behalf of a Federal agency that has administrative jurisdiction over Federal lands.

COAL LEASE means a Federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the Federal Acquired Lands Leasing Act of 1947 *(30 US.C. 351* et seq.).

COOPERATIVE AGREEMENT means a cooperative agreement entered into in accordance with section 523(c) of the Act and Part 745 of this chapter.

FEDERAL LAND MANAGEMENT AGENCY means a Federal agency having administrative jurisdiction over the surface of Federal lands that are subject to these regulations.

FEDERAL LEASE BOND means the bond or equivalent security required by 43 CFR Part 3400 to assure compliance with the terms and conditions of a Federal coal lease.

FEDERAL LESSEE PROTECTION BOND means a bond payable to the United States or the State, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on Federal lands, pursuant to section 715 of the Act.

LEASE TERMS, CONDITIONS AND STIPULATIONS means all of the standard provisions of a Federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific

requirements included in Federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

LEASED FEDERAL COAL means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

MINERAL LEASING ACT or MLA means the Mineral Leasing Act of 1920, as amended, *30 U.S.C. 181,* et seq.

MINING PLAN means the plan for mining leased Federal coal required by the Mineral Leasing Act.

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

REGULATORY AUTHORITY means the State regulatory authority pursuant to a cooperative agreement approved under Part 745 of this chapter or, in the absence of a cooperative agreement, OSM.

TVA-OWNED LANDS means land owned by the United States and entrusted to or managed by the Tennessee Valley Authority.

(b) The following terms shall have meanings as set forth in Part 211 of this title: Exploration; exploration plan; maximum economic recovery; method of operation; mine; and resource recovery and protection plan.

SECTION 740.10 - INFORMATION COLLECTION.

The information collection requirements contained in this part have been approved by OSM of Management and Budget under *44 U.S.C. 3507* and assigned clearance numbers 1029-0026 and 1029-0027. The information is being collected to determine compliance with sections 506, 507, 509, 510, 515 and 523 of the Act *(30 U.S.C. 1256,* 1257, 1259, 1260, 1265 and 1273) and this part. The obligation to respond to the information collection requirements of this part is mandatory.

SECTION 740.11 - APPLICABILITY.

(a) Upon approval or promulgation of a regulatory program for a State, that program and this subchapter shall apply to:

(1) Coal exploration operations on lands not subject to Part 211 of this title,

(2) Surface coal mining and reclamation operations on lands containing leased Federal coal, and

(3) Surface coal mining and reclamation operations on lands where either the coal to be mined or the surface are owned by the United States, except as specified in this subchapter.

(b) Where OSM is the regulatory authority, references in the State program to the State or an agency or official of the State (with respect to functions of the State acting as regulatory authority) shall be construed as referring to OSM.

(c) Where the Secretary and a State have entered into a cooperative agreement, the cooperative agreement shall delineate the responsibilities of the Secretary and the State with respect to the administration of the regulatory program and this subchapter.

(d) Nothing in this subchapter shall affect in any way the authority of the Secretary or any Federal land management agency to include in any lease, license, permit, contract, or other instrument such conditions as may be

appropriate to regulate surface coal mining and reclamation operations under provisions of law other than the Act on land under their jurisdiction.

(e) This subchapter shall not apply to surface coal mining and reclamation operations within a State prior to approval or promulgation of a regulatory program for the State.

SECTION 740.13 - PERMITS.

(a) General requirements.

(1) No person shall conduct surface coal mining and reclamation operations on lands subject to this part unless that person has first obtained a permit issued pursuant to the regulatory program and this part.

(2) Every person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit and the lease or license, the Act, this subchapter, the regulatory program and all other applicable State and Federal laws and regulations.

(3) Surface coal mining and reclamation operations authorized under the initial regulatory program or Part 211 of this title, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present:

(i) A timely and administratively complete application for a permit to conduct those operations under this Part has been made to the regulatory authority in accordance with the provisions of this Part and the applicable regulatory program;

(ii) The regulatory authority has not yet rendered a final decision with respect to the permit application; and

(iii) Those operations are conducted in compliance with all terms and conditions of the initial regulatory program approval or permit, the requirements of the Act. 30 CFR Chapter VII, Subchapter B or Part 211 of this title, as applicable, applicable State laws and regulations, and the requirements of the applicable lease or license.

(b) Permit Application Package.

(1) Each application for a permit, or permit revision or renewal thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be accompanied by a fee made payable to the regulatory authority. The amount of the fee shall be determined in accordance with the permit fee criteria of the applicable regulatory program.

(2) Unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

(3) Each permit application package shall include:

(i) The information required for a permit application or for an application for revision or renewal of a permit under the applicable regulatory program;

(ii) The resource recovery and protection plan required by Part 211 of this title for operations on lands containing leased Federal coal; and

(iii) Where OSM is the regulatory authority or where the proposed operations are on lands containing leased Federal coal, the following supplemental information to ensure compliance with Federal laws and regulations other than the Act:

(A) A description of the affected area of the proposed surface coal mining and reclamation operation with respect to: (1) Increases in employment, population and revenues to public and private entities, and (2) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

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

(C) A statement, including maps and ownership data as appropriate, of any cultural or historical sits listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation.

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

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

(F) A description of the location, acreage and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation.

(G) A description of active and inactive nests and prey areas of any Bald or Golden eagles located within the affected area of the proposed surface coal mining and reclamation operations.

(H) A description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations.

(4) Where the surface of the Federal lands is subject to a lease or permit issued by the Federal government to a person other than the applicant, the permit application package shall contain information sufficient to demonstrate compliance with the requirements of Section 740.15(c)(1). This requirement shall not apply to TVA-owned lands.

(c) Permit Review and Processing. Applications for permits, permit revisions or renewals thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be reviewed and processed in accordance with the requirements of the applicable regulatory program, subject to the following additional requirements:

(1) Permit terms and conditions. Permits shall include, as applicable, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations.

(2) Criteria for permit approval or denial. The regulatory authority shall not approve an application for a permit, or permit revision or renewal thereof for surface coal mining and reclamation operations on lands subject to this part unless the application is in accordance with the requirements of the applicable regulatory program and this Part or a cooperative agreement, as applicable.

(3) Public participation in permit review process. Where public hearings were held and determinations made under section 2(a)(3) (A), (B) and (C) of the Mineral Leasing Act *(30 U.S.C. 201*(a)(3) (A), (B) and (C)), such hearings may be made a part of the record of each public hearing on a permit application held pursuant to the requirements of the applicable regulatory program and this part. Matters covered at such hearings and determinations made at such hearings need not be readdressed.

(4) Permit review processing for operations on lands administered by a Federal land management agency. Upon receipt of a permit application package or a proposed revision or renewal of an approved permit that involves surface coal mining and reclamation operations on lands administered by an agency of the Federal Government, the regulatory authority shall transmit a copy of the complete permit application package, or proposed revision or renewal thereof, to the Federal land management agency, with a request for review and comment.

(5) Consultation with other Federal agencies. Prior to approving or disapproving a permit, permit revision or renewal thereof, the regulatory authority shall consider the comments of the Federal land management agency and include these comments in the record of permit decisions.

(6) Permit processing schedule. The regulatory authority shall process the permit application package within the time schedule established by the applicable regulatory program, except that the schedule may be extended if necessary to ensure compliance with Federal laws and regulations other than the Act.

(7) Determination of operator compliance with the Act. Where OSM is the regulatory authority, it shall afford the applicant or operator an opportunity for an adjudicatory hearing as provided in 43 CFR Part 4 prior to a final determination on whether the applicant, or the operator specified in the application, controls or has controlled mining 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 provisions of the Act.

(8) Administrative review of decisions on permit applications. Where OSM is the regulatory authority, the final decision on a permit application is subject to an appeal to the Department's Office of Hearings and Appeals as provided in Part 787 of this Chapter. Where the State is the regulatory authority under a cooperative agreement, the final decision on a permit application is subject to administrative review as provided under the approved State program.

(9) Bonds and insurance required for issuance of permits. After the approval of an application for a new or revised permit or for renewal of an existing permit, but prior to issuance of such permit, the applicant/permittee shall file with the regulatory authority:

(i) a performance bond which meets the requirements of the applicable regulatory program;

(ii) proof of liability insurance in accordance with the applicable regulatory program; and

(iii) where required, evidence of the execution of a Federal lessee protection bond. Bonds required to be filed with OSM shall be in a form required by OSM and made payable to the United States.

(d) Review of permit revisions.

(1) Where the State is the regulatory authority for surface coal mining and reclamation operations on lands subject to this subchapter, it shall inform OSM of each request for a permit revision with respect to operations on lands containing leased Federal coal.

(2) OSM shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary's approval under section 746.18 of this chapter.

(3) The regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other Federal laws, regulations and executive orders for which it is responsible.

(e) Transfer, assignment or sale of rights.

(1) The regulatory authority, before approving or disapproving an application for transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter, shall consult with the appropriate Federal land management agency and the Bureau of Land Management, as applicable.

(2) Approval of a transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter shall not be construed to constitute a transfer or assignment of leasehold interests. Leasehold interests may be transferred or assigned only in accordance with 43 CFR Part 3453.

(f) Suspension or revocation of permits.

(1) A permit to conduct surface coal mining and reclamation operations on Federal lands may be suspended or revoked by the regulatory authority in accordance with Part 843 of this chapter and the applicable regulatory program.

(2) If a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the regulatory authority shall notify the Bureau of Land Management so that the Bureau of Land Management can determine whether action should be taken to cancel the Federal lease. This section does not release the Federal lessee from the diligent development or continued operation requirements of Part 211 of this title.

SECTION 740.15 - BONDS ON FEDERAL LANDS.

(a) Federal lease bonds.

(1) Each holder of a Federal coal lease that is covered by a Federal lease bond required under 43 CFR Part 3474 may apply to the authorized officer for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(2) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

(i) The lessee has secured a suitable performance bond covering the permit area under this part;

(ii) There are no pending actions or unresolved claims against existing bonds; and

(iii) The authorized officer has received concurrence from OSM and the Bureau of Land Management.

(b) Performance bonds. Where the State is the regulatory authority under a cooperative agreement, the performance bonds required for operations on Federal lands shall be made payable to the United States and the State. Where OSM is the regulatory authority, such bonds shall be payable only to the United States.

(c) Federal lessee protection bonds.

(1) Where leased Federal coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States for purposes other than surface coal mining, the applicant for a mining permit, if unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, shall submit to the regulatory authority with his application evidence of execution of a bond or undertaking which meets the requirements of this section. The Federal lessee protection bond is in addition to the performance bond required by a regulatory program. This section does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of transfer, sale or consent to other uses.

(2) The bond shall be payable to the United States and, as applicable, the State for the use and benefit of the permittee or lessee of the surface lands involved.

(3) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops or tangible improvements of the permittee or lessee of the surface lands.

(4) The amount of the bond shall be determined either by the applicant and the Federal lessee or permittee or as determined in an action brought against the person conducting surface coal mining and reclamation operations or upon the bond in a court of competent jurisdiction.

(d) Release of Bonds.

(1) A Federal lease bond may be released by the State upon satisfactory compliance with all applicable requirements of Part 211 of this chapter and 43 CFR Part 3400 and after the release is concurred in by the Bureau of Land Management.

(2) A Federal lessee protection bond shall be released upon the written consent of the permittee or lessee.

(3) Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSM.

SECTION 740.17 - INSPECTION, ENFORCEMENT AND CIVIL PENALTIES.

(a) General requirements.

(1) Where OSM is the regulatory authority, Parts 840, 842, 843 and 845 of this chapter shall govern its inspection, enforcement and civil penalty activities with respect to surface coal mining and reclamation operations on Federal lands.

(2) Where the State is the regulatory authority under a cooperative agreement, the State program shall govern inspection, enforcement and civil penalty activities by the regulatory authority with respect to surface coal mining and reclamation operations on Federal lands, while the requirements of Part 842, 843 and 845 of this chapter shall govern OSM inspection, enforcement and civil penalty activities conducted in oversight of the State program.

(3) The requirements of this section shall not apply to coal exploration on Federal lands subject to the requirements of Part 211 of this chapter.

(b) Right of entry.

(1) Persons engaging in coal exploration or surface coal mining and reclamation operations on Federal lands shall provide access for any authorized officer of OSM, the regulatory authority, and, as applicable, the Bureau of Land Management or the appropriate Federal land management agency to inspect the operations, without advance notice or a search warrant and upon presentation of appropriate credentials, to determine whether the operations are in compliance with all applicable laws, regulations, notices and orders, and terms and conditions of the permit.

(2) Any authorized representative of the regulatory authority and, as applicable, the Bureau of Land Management may, at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under the Act, this subchapter and the permit, lease, license or mining plan in accordance with paragraph (a) of this section.

(3) No search warrant shall be required with respect to any activity under paragraph (a) or (b) of this section, except entry into a building without consent of the person in control of the building.

(c) Inspections. Inspections shall, to the extent practical, be conducted jointly if more than one government agency is involved. The regulatory authority shall coordinate inspections by Federal agencies and may request the participation of representatives from other Federal agencies when necessary to ensure compliance with this subchapter and other applicable Federal laws, regulations and orders.

SECTION 740.19 - PERFORMANCE STANDARDS.

(a) Operations and reclamation.

(1) Surface coal mining and reclamation operations on lands subject to this Part shall be conducted in accordance with the performance standards of the applicable regulatory program.

(2) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with the requirements of the terms, conditions and stipulations of the lease issued under the Mineral Leasing Act and its implementing regulations in Part 211 of this title, as applicable, and the mining plan.

(b) Completion of operations and abandonment.

(1) Upon completion of operations, bonds shall be released in accordance with Section 740.15(d) of this chapter.

(2) Where there is a Federal lease bond:

(i) Not less than 30 days prior to permanent cessation or abandonment of surface coal mining and reclamation operations, the person conducting those operations shall submit to OSM, in duplicate, a notice of intention to cease or abandon those operations, with a statement of the number of acres affected by the operations, the extent and kind of reclamation accomplished and the structures and other facilities that are to be removed from or remain on the permit area.

(ii) Upon receipt of this notice, the Bureau of Land Management and the appropriate Federal land management agency shall promptly make joint inspections to determine whether all operations have been completed in accordance with the requirements of Part 211 of this title, the lease or licenses and the mining plan. Where all of these requirements have been complied with, the liability under the lease bond of the person conducting surface coal mining and reclamation operations shall be terminated.

(3) Where OSM is the regulatory authority, public hearings held with respect to final abandonment and releases of the performance bonds shall be in accordance with *5 U.S.C. 554* and 43 CFR Part 4.

PARTS 741, 742, 743 AND 744 -- [REMOVED]

7. Parts 741, 742, 743 and 744 are removed.

8. Part 745 is revised to read as follows:

PART 745 -- STATE-FEDERAL COOPERATIVE AGREEMENTS

Section

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

SECTION 745.1 - SCOPE.

This Part sets forth requirements for the development, approval and administration of cooperative agreements under section 523(c) of the Act.

SECTION 745.10 - INFORMATION COLLECTION.

The information collection requirements contained in this part have been approved by OSM of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0028. The information is being collected pursuant to section 523(c) of the Act *(30 U.S.C. 1273*(c)) and will be used to support a State's request for a State-Federal cooperative agreement or an amendment, termination or reinstatement thereto.

The obligation to respond to the information collection requirements of this part is mandatory.

SECTION 745.11 - APPLICATION AND AGREEMENT.

(a) The Governor of any State may request that the Secretary enter into a cooperative agreement with the State, provided the State has an approved State regulatory program or has submitted a regulatory program for approval under Part 731 of this chapter, and has or may have within the State surface coal mining and reclamation operations on Federal lands.

(b) A request for a cooperative agreement shall be submitted in writing and, except to the extent previously submitted in the State program, shall include the following information:

(1) Information sufficient for OSM to make findings in accordance with paragraph (f) of this section;

(2) A proposed agreement consistent with the requirements of this Part; and

(3) A certification by the Attorney General or the chief legal officer of the State regulatory authority that no State statutory, regulatory or legal constraint exists which would preclude the State regulatory authority from fully carrying out the proposed cooperative agreement.

(c) OSM shall publish a notice of the request and the full text of the terms of the proposed cooperative agreement as submitted or as subsequently modified by OSM and the State in the Federal Register as a proposed rule. A notice of the request and a summary of the terms of the proposed agreement shall also be published in a newspaper(s) of general circulation throughout the State. Both notices shall include:

(1) The location at which a copy of the request submitted by the State may be obtained; and

(2) A date, not less than 30 days after publication of the notices, before which members of the public may submit written comments on the request and the person to whom comments should be addressed.

(d) A public hearing shall be held within the comment period in a suitable location in the State requesting the cooperative agreement. This hearing may be combined with public hearings required under Part 732 of this chapter for the Secretary's consideration of approval of a State program submission, if appropriate. The date, time and place of the public hearing(s) on the request will be published in the Federal Register not less than 15 days prior to the date of the hearing.

(e) Before the expiration of the comment period, OSM shall consult with the Bureau of Land Management, Fish and Wildlife Service, and Federal land management agencies, as appropriate, with respect to the proposed cooperative agreement.

(f) OSM shall recommend to the Secretary that a cooperative agreement be entered into with a State, if OSM finds that:

(1) The State has an approved State regulatory program;

(2) The State regulatory authority has sufficient budget, equipment and personnel to enforce fully its regulatory program on lands subject to this Part in the State; and

(3) The State has the legal authority to enter into the cooperative agreement.

(g) The Secretary shall publish in the Federal Register his or her decision with respect to a request by a State to enter into a cooperative agreement and the reasons therefor and the full text of the cooperative agreement.

SECTION 745.12 - TERMS.

Each cooperative agreement shall include:

(a) Terms obligating the State regulatory authority to inspect all surface coal mining and reclamation operations on Federal lands in accordance with the State regulatory program and to enforce the State program on Federal lands;

(b) A description of the powers and authority reserved by the Secretary, including, but not limited to, those specified under Section 745.13;

(c) Provisions for the administration and enforcement by OSM and the State of this subchapter so as to minimize overlap and duplication;

(d) Provisions for regular reports by the State regulatory authority to OSM on the results of the State's implementation and administration of the cooperative agreement.

(e) Terms requiring the State regulatory authority to maintain sufficient personnel and facilities to comply with the terms of the cooperative agreement, and to notify OSM of any substantial change in State statutes, regulations, funding, staff, or other changes which would affect the State's ability to carry out the terms of the cooperative agreement;

(f) Terms for coordination among the State regulatory authority, the Federal land management agency, the Bureau of Land Management and OSM;

(g) Terms obligating the State regulatory authority to --

(1) Make available to OSM information on any action taken regarding any permit application for surface coal mining and reclamation operations on Federal lands; and

(2) Where lands containing leased Federal coal are involved, provide OSM, in the form specified by OSM in consultation with the State, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

SECTION 745.13 - AUTHORITY RESERVED BY THE SECRETARY.

The Secretary shall not delegate to any State, nor shall any cooperative agreement under this Part be construed to delegate to any State, authority to --

(a) Designate Federal lands as unsuitable for surface coal mining under subchapter F of this chapter or terminate such designations;

(b) Comply with the National Environmental Policy Act of 1969, as amended, *42 U.S.C. 4321* et seq., and Federal laws and regulations other than SMCRA;

(c) Develop land use management plans for Federal lands where the surface estate is Federally-owned;

(d) Regulate non-coal mining activities on Federal lands;

(e) Determine when, where, and how to lease Federal coal and how much to lease;

(f) Develop terms for Federal coal leases, including any special terms relating to mining and reclamation procedures;
(g) Evaluate Federal coal resources;

(h) Establish royalties, rents, and bonuses charged in connection with Federal coal leases;

(i) Approve mining plans or modifications thereto;

(j) Enforce Federal lease terms, including diligent development and maximum economic recovery requirements;

(k) Approve or determine post-mining land uses for Federal lands where the surface estate is Federally-owned;

(l) Release Federal lease bonds;

(m) Evaluate the State's administration and enforcement of the approved State program and implementation of the cooperative agreement on Federal lands;

(n) Comply with the inspection, enforcement and civil penalties requirements of Parts 842 and 843 of this chapter except as provided under Section 740.4(c)(5) of this chapter;

(o) Determine valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under section 522(e) (1) or (2) of the Act; or

(p) Determine that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining and reclamation operations on any Federal lands within the boundaries of any national forest under section 522(e)(2) of the Act.

SECTION 745.14 - AMENDMENTS.

A cooperative agreement which has been approved pursuant to Section 745.11 may be amended by mutual agreement of the Secretary and the Governor of a State. Amendments shall be adopted by Federal rulemaking, in accordance with Section 745.11.

SECTION 745.15 - TERMINATION.

(a) A cooperative agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the cooperative agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

(b) A cooperative agreement may be terminated by the Secretary after giving notice to the State regulatory authority and affording the State regulatory authority and the public an opportunity for a public hearing and comment period, in accordance with the cooperative agreement, if the Secretary finds that:

(1) The State regulatory authority has substantially failed to comply with the requirements of this subchapter, the State program, or the cooperative agreement, or

(2) The State regulatory authority has failed to comply with any undertaking by the State in the cooperative agreement upon which approval of the State program, cooperative agreement, or grant by OSM for administration or enforcement of the State program or cooperative agreement was based.

(c) A cooperative agreement shall terminate --

(1) When no longer authorized by Federal law or the applicable State laws and regulations; or

(2) Upon termination or withdrawal of the Secretary's approval of the applicable State program.

SECTION 745.16 - REINSTATEMENT.

(a) A State may apply for reinstatement of the cooperative agreement by providing written evidence to OSM that the State has remedied all defects for which the agreement was terminated and is fully capable of carrying out the cooperative agreement. Any reinstatement shall be by Federal rulemaking in accordance with Section 745.11.

(b) OSM may recommend approval of the reinstatement to the Secretary if it finds that the State meets all the requirements for the initial approval of a cooperative agreement under this subchapter.

(c) The Secretary may approve reinstatement of a cooperative agreement if the Secretary concurs in findings of OSM which recommended that approval.

9. Part 746 is added to Subchapter D to read as follows:

PART 746 -- REVIEW AND APPROVAL OF MINING PLANS

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

SECTION 746.1 - SCOPE.

This Part provides the process and requirements for the review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal.

SECTION 746.10 - INFORMATION COLLECTION.

The information collection requirements contained in this section have been approved by OSM of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0026. The information is being collected to determine compliance with section 523 of the Act *(30 U.S.C. 1273)* and this part. The obligation to respond to the information collection requirements of this Part is mandatory.

SECTION 746.11 - GENERAL REQUIREMENTS.

(a) No person shall conduct surface coal mining and reclamation operations on lands containing leased Federal coal until the Secretary has approved the mining plan.

(b) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with a permit issued in accordance with this subchapter, any lease terms and conditions, and the approved mining plan.

SECTION 746.13 - DECISION DOCUMENT AND RECOMMENDATION ON MINING PLAN.

OSM shall prepare and submit to the Secretary a decision document recommending approval, disapproval or conditional approval of the mining plan to the Secretary. The recommendation shall be based, at a minimum, upon:

(a) The permit application package, including the resource recovery and protection plan;

(b) Information prepared in compliance with the National Environmental Policy Act of 1969, *42 U.S.C. 4321,* et seq.;

(c) Documentation assuring compliance with the applicable requirements of other Federal laws, regulations and executive orders other than the Act;

(d) Comments and recommendations or concurrence of other Federal agencies, as applicable, and the public;

(e) The findings and recommendations of the Bureau of Land Management with respect to the resource recovery and protection plan and other requirements of the lease and the Mineral Leasing Act;

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

(g) The findings and recommendations of OSM with respect to the additional requirements of this subchapter.

SECTION 746.14 - APPROVAL, DISAPPROVAL OR CONDITIONAL APPROVAL, OF MINING PLAN.

The Secretary shall approve, disapprove or conditionally approve the mining plan in accordance with this part.

SECTION 746.17 - TERM OF APPROVAL.

(a) Each mining plan approval shall cover the operations for which a complete permit application package was submitted, unless otherwise indicated in the approval.

(b) An approved mining plan shall remain in effect until modified, cancelled or withdrawn and shall be binding on any person conducting mining under the approved mining plan.

SECTION 746.18 - MINING PLAN MODIFICATION.

(a) Mining plan modifications shall be approved by the Secretary.

(b) The approval of mining plan modifications shall be in accordance with the procedures of this part for mining plan approval.

(c) Surface coal mining and reclamation operations on lands containing leased Federal coal pursuant to a permit revision issued by the regulatory authority shall not commence until --

(1) OSM determines that the permit revision does not constitute a mining plan modification under this section, or

(2) If the permit revision constitutes a mining plan modification under this section, such modification has been approved by the Secretary.

(d) Permit revisions constitute mining plan modifications if they meet any of the following criteria:

(1) Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than the Act;

(2) Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining;

(3) Any change in the location or amount of coal to be mined, except where such change is the result of:

(i) A minor change in the amount of coal actually available for mining from the amount estimated; or

(ii) An incidental boundary change;

(4) Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time;

(5) Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act or 1969, *42 U.S.C. 4321* et seq .;

(6) Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is Federally-owned.

[FR Doc. 83-3941 Filed 2-15-83; 8:45 am]
BILLING CODE 4310-05-M