

27—40.32 (207) Revision or amendment; renewal; and transfer, assignment, or sale of permit rights. The following is incorporated by reference: 30 CFR Part 774, as in effect on July 1, 2010, with the following exceptions:

40.32(1) 30 CFR 774.10(b) and (c) are deleted.

40.32(2) 30 CFR 774.13 is deleted, with the exception that the notice, public participation, and notice of decision requirements of 30 CFR 773.6, 773.19(b), and 778.21 shall apply to all revisions.

These rules utilize the term “revision” to describe a change to a permit that constitutes a significant departure from the approved permit and the term “amendment” to describe a change that does not constitute a significant departure. A significant departure shall be any change in permit area, mining method or reclamation procedure, which would, in the opinion of the division, significantly change the effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment.

40.32(3) Permit revisions and amendments.

a. During the term of a permit, the permittee may submit an application to the division for revision or amendment of the permit.

(1) A revision or amendment is required for any changes in the approved permit. All information related to approved revisions or amendments shall be updated in all public copies of the permit.

(2) When a permit is reviewed at any time, including midterm review, the division may, by order, require revision or amendment of the approved permit to ensure compliance with the Act and these rules. Any order of the division requiring revision or amendment of permits shall be based upon written findings, and the order shall be subject to the provisions for administrative and judicial review of Part 9 of this chapter.

(3) A revision or amendment shall be obtained in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the approved permit was issued.

(4) A revision or amendment shall also be obtained as otherwise required under the Act or these rules.

b. An application for a permit revision will be approved or disapproved within 90 days following a determination of completeness for the revision application by the division. An application for an amendment will be approved or disapproved within 60 days of submittal of the application to the division.

c. Any application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules and must provide replacement documentation fully describing changes to be made in the same detail as required in the original permit.

d. Criteria for approval. No application for a permit revision or amendment shall be approved unless the application demonstrates and the division finds that the reclamation as required by the Act and the regulatory program can be accomplished, that the application complies with all requirements of the Act and the regulatory program, and any applicable requirements of written findings for the permit have also been met.

e. Extensions to permit area.

(1) Any increase in permit area, except for incidental boundary revisions, shall not be approved under this subrule, but shall be treated as a new permit application.

(2) Incidental boundary revisions are considered significant departures and as such shall be treated as revisions. A total of 20 acres of incidental boundary changes will be allowed over the life of a permit with individual increments being subject to approval by the division. Application for an incidental boundary revision shall include demonstration by the applicant that the area for which mining operations are proposed is contiguous to the approved permit.

40.32(4) Delete 30 CFR 774.9 and 774.15(c)(3).

40.32(5) Add at the end of 30 CFR 774.15(a) the sentence “Renewal is not required if the division determines that the phase II bond was released over the entire permit area before the expiration of the permit term.”

40.32(6) Delete from 30 CFR 774.15(b)(2)(i) the word “and” in the third line, and add at the end the words “and current status of the mine plan, other details and the time table—if different from the one previously approved—of the remaining phases of the operation and reclamation plans.”

40.32(7) The general word substitution for “OSM” at rule 27—40.1(17A,207) does not apply to 30 CFR 774.17(e)(1).

[ARC 9575B, IAB 6/29/11, effective 8/3/11]