contiguous to the proposed mining property."

For the reasons discussed in the appendix to this notice, the Director has denied the petition. The Director's letter of response to the petitioner on this rulemaking petition appears in the appendix to this notice. This letter reports the Director's decision to the petitioner. Included in the appendix is an evaluation report on the issues raised by the petitioner. Included in this report is a discussion of the comments received on the petition and OSM's position on the issues.

Dated: January 18, 1995.

Robert Uram,

Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

January 18, 1995.

Mr. James Kringlen,

Appalachian Research and Defense Fund, Inc., 1116–B Kanawha Boulevard, East, Charleston, West Virginia 25301.

Dear Mr. Kringlen: This is in response to your letter of January 31, 1994, to Bruce Babbitt, Secretary of the Interior, which was forwarded to the Office of Surface Mining Reclamation and Enforcement (OSM) for appropriate action. In your letter you propose that ". . . a new regulation be issued by OSM or the Department of the Interior (DOI), as appropriate, which would require all permit applications for surface mining include documentation with public records identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property."

On March 28, 1994, OSM published a notice of availability in the Federal Register and requested comments on the petition (59 FR 14374). The comment period closed on April 27, 1994. Nine comments were received by OSM during the comment period.

After careful consideration of the arguments presented in the petition and public comments, I am denying the petition. The basis for my decision is fully disclosed in the enclosed evaluation of the petition. As provided in 30 CFR 700.12, this decision constitutes the final decision for the Secretary of the Interior.

I would like to take this opportunity to thank you for bringing the problems faced by Mrs. Caudill to our attention. Efforts such as yours provide both the impetus and the guidance necessary for us to critically examine our program and take corrective action where necessary.

Sincerely,

Robert J. Uram,

Director.

Evaluation of the Petition To Amend OSM's Rules Governing Right-of-Entry Documentation Required in Permit Applications

Background on Petition

On February 18, 1994, a petition from Mr. James Kringlen, Appalachian Research and Defense Fund, Inc., 1116-B Kanawha Boulevard, East, Charleston, West Virginia 25301 (the petitioner) was forwarded from the Secretary's Office, Department of the Interior, to OSM. The petition requested that "* * * a new regulation be issued by the Office of Surface Mining or the Department of the Interior, as appropriate, which would require all permit applications for surface mining include documentation with public records (emphasis included) identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property.

Section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act) and 30 CFR 700.12 provide that any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule promulgated under the Act. These regulations require the petition to set forth the facts, technical justification, and law which require the issuance, amendment, or repeal of a regulation. 30 CFR 700.12(b). Based on this information, the Director shall determine if the petition provides a reasonable basis for the proposed action. Facts, technical justification, or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. The Director may hold a public hearing or conduct other investigations or proceedings in order to determine whether the petition should be granted. 30 CFR 700.12(c). If the petition is granted, the Director is required to commence a rulemaking proceeding. 30 CFR 700.12(d)(1). If the petition is denied, the Director is required to notify the petitioner in writing of the reasons for denial. 30 CFR 700.12(d)(2).

On March 28, 1994, OSM published a notice in the Federal Register requesting comments on the petition. In the notice, OSM announced that it would not hold a public hearing but would accept written comments on the petition during the comment period which would end on April 27, 1994. It stated that, by appointment, OSM employees would be available to meet with the public during business hours (9)

a.m. to 5 p.m. Eastern standard time) during the comment period. The notice also stated that all comments and supporting documents would be entered into the Administrative Record on the petition (59 FR 14374).

OSM received comments from the Ohio Mining and Reclamation Association, the Dickenson County Citizens Committee, the U.S. Department of the Interior Bureau of Mines, the Alabama Coal Association, the Illinois Department of Mines and Minerals, the Wyoming Department of Environmental Quality, the Kentucky Resources Council, the Indiana Department of Natural Resources, and the Joint NCA/AMC Committee on Surface Mining Regulations. These comments have been made part of the Administrative Record.

Applicable Law and Regulations

Sections 102, 201(c), 501(b), 503, 504, and especially 507(b) and 510(b)(6) of the Act which establish application requirements regarding documentation of the right is enter and commence surface mining operations.

30 CFR § 773.15(c) which requires that the regulatory authority find in writing that the application is complete and accurate and that the applicant has complied with the requirements of the Act and the regulatory program.

Section 778.15(a) which requires that the permit applicant describe and identify the documents upon which he bases his right to enter and commence surface mining, and also state whether the right is subject to any pending litigation.

Section 778.15(b) which provides that in the situation where the private mineral estate has been severed from the private surface estate, the applicant must also submit copies of 1) the written consent of the surface owner for the extraction of coal by surface mining methods; 2) copies of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or 3) if the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law the applicant has the legal authority to extract the coal by those methods.

Section 778.15(c) which closely tracks the language in Sec. 507(b)(9) of the Act by providing that "(n)othing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes."

30 CFR PART 775—Administrative and Judicial Review of Decisions, Which prescribes requirements for