

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 774, 778, 843 and 847

RIN 1029-AC08

Ownership and Control Settlement Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), propose to amend certain provisions of our December 19, 2000, final ownership and control rule (hereinafter referred to as the 2000 final rule) in order to effectuate a settlement agreement we entered into with the National Mining Association (NMA). Specifically, we propose to amend the provisions of the 2000 final rule pertaining to the definitions of ownership and control; permit eligibility determinations; eligibility for provisionally issued permits; improvidently issued permits; challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; providing applicant, operator, and ownership and control information; improvidently issued State permits; and alternative enforcement. This proposed rule does not suspend any of the provisions of the 2000 final rule. The proposed revisions are authorized under the Surface Mining Control and Reclamation Act of 1977, as amended (hereinafter referred to as SMCRA or the Act).

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern Time, on February 27, 2004.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 5 p.m., Eastern Time, on January 20, 2004. If you wish to attend a hearing, but not speak, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and speak at a hearing, you should follow the procedures under “III. Public Comment Procedures.”

ADDRESSES: If you wish to provide written comments, you may submit your comments by any one of three methods (see “III. Public Comment Procedures”). We will make comments available for public viewing during regular business hours. You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. You may also submit comments electronically to OSM at the following Internet address: osmrules@osmre.gov.

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to OIRA_DOCKET@omb.eop.gov or via facsimile to (202) 395-6566.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date and time for any hearing in the **Federal Register** before the hearing. If you are disabled and require special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260-8424 or (800) 643-9748. E-Mail: ebandy@osmre.gov.

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I. Background to the Proposed Rule

This proposed rule would amend certain provisions of our 2000 final ownership and control rule published on December 19, 2000 at 65 FR 79582. That rule, which took effect for Federal programs (*i.e.*, SMCRA programs for which OSM is the regulatory authority) on January 18, 2001, primarily addresses ownership or control of surface coal mining operations under section 510(c) of SMCRA. 30 U.S.C. 1260(c). Under section 510(c), a permit applicant is not eligible to receive a permit if the applicant owns or controls any surface coal mining operation that is in violation of SMCRA or other

applicable laws. In addition to implementing section 510(c), the rule also addresses, among other things, permit application information requirements, post-permit issuance information requirements, entry of information into the Applicant/Violator System (AVS), application processing procedures, and alternative enforcement. *See generally* 65 FR 79661-71.

On February 15, 2001, the National Mining Association (NMA) filed a lawsuit in the U.S. District Court for the District of Columbia in which it challenges the 2000 final rule on multiple grounds. *National Mining Ass'n v. Office of Surface Mining*, No. 01-366 (CKK) (D.D.C.). NMA's lawsuit is the latest chapter in litigation concerning ownership and control and related issues. Litigation in this area—involving, at various times, OSM, State regulatory authorities (administering OSM-approved State programs), NMA, and environmental groups—has been contentious and ongoing, virtually uninterrupted, since at least 1988. The 2000 final rule, which we are proposing to revise, replaced a 1997 interim final rule (62 FR 19451), which was partially invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. *National Mining Ass'n v. Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) (*NMA v. DOI II*). The interim final rule replaced three sets of predecessor regulations dating back to 1988 and 1989 (53 FR 38868 [1988], 54 FR 8982 [1989], 54 FR 18438 [1989]), which were invalidated by the D.C. Circuit because the court found that one aspect of the rules was inconsistent with section 510(c) of the Act. *National Mining Ass'n v. Department of the Interior*, 105 F.3d 691 (D.C. Cir. 1997) (*NMA v. DOI I*). The preamble to the 2000 final rule contains a detailed discussion of the prior rules and the related litigation. *See generally* 65 FR 79582-84.

This ongoing cycle of litigation has created a great deal of regulatory uncertainty for OSM, State regulatory authorities (administering OSM-approved State programs), the regulated community, and the public in general. Thus, in an effort to introduce regulatory stability and bring the litigation between OSM and NMA to an end, we entered into negotiations with NMA in an attempt to settle NMA's challenge to the 2000 final rule. Ultimately, the parties were able to settle all of the issues presented in NMA's rule challenge. Under the terms of the settlement, we agreed to propose certain regulatory amendments “which are the subject of this proposed rulemaking—in accordance with the