

30 CFR 778.11(c). We propose to add “partner” to this list of persons. We also propose to redesignate current 30 CFR 778.11(c)(4) as 30 CFR 778.11(c)(5) and revise it to read “Person who owns 10 percent or more of the applicant or the operator.” These changes likewise comport with section 507(b)(4) of the Act.

As we explain under the discussion of 30 CFR 701.5, above, in conjunction with revising the definition of *control* or *controller*, we propose to remove the requirement at 30 CFR 778.11(c)(5), which requires an applicant to identify all of its owners or controllers in a permit application. We propose this revision because we believe it is important to establish “bright line,” objective permit information requirements. Since we propose to retain a definition of control that vests regulatory authorities with discretion to make fact-specific findings of control on a case-by-case basis, it is difficult, or impossible, to have an objective reporting requirement based on that definition. Even though we propose to remove this reporting requirement, we are confident that the disclosure requirements at sections 507(b) and 510(c) of the Act will give regulatory authorities all the information they need to enforce section 510(c). Further, we note that this information is not required to be disclosed under the Act. We have submitted a request to the Office of Management and Budget that modifies the information collection requirements for Part 778 to reflect this proposed change.

Finally, in litigation concerning our 2000 final rule, NMA challenged 30 CFR 778.11(d). This section provides that “[t]he natural person with the greatest level of effective control over the entire proposed surface coal mining operation must submit a certification, under oath, that he or she controls the proposed surface coal mining operation.” NMA challenged the provision on procedural and substantive grounds, claiming, among other things, that it is vague and raises self-incrimination concerns. In order to settle this claim, we propose to revise the regulatory language at 30 CFR 778.11(d) to clarify the applicability and scope of the provision.

Particularly, we are proposing that a permit applicant must designate the natural person expected to have the greatest level of control over the entire proposed surface coal mining operation. That person would, in turn, sign the permit application, thereby acknowledging the designation. The proposed amendment would also clarify that a designation will not, by itself, be sufficient evidence on which to base the

imposition of an individual civil penalty under sections 30 CFR 724.12 or 846.12 or an alternative enforcement action under sections 30 CFR 847.11 or 847.16. However, if the operation that the designated person controls has an unabated or uncorrected violation, the designated person would not be eligible to receive a permit under 30 CFR 773.12 or section 510(c) of SMCRA, unless he successfully challenges his control of the operation under sections 30 CFR 773.25 through 773.28. *See, e.g.*, 65 FR 79631 (explaining that even persons who must currently certify as to their control can, in effect, “de-certify” if they can demonstrate changed circumstances).

30 CFR 843.21—Procedures for Improvidently Issued State Permits

Section 843.21 of our 2000 final rule revised the procedures governing State permits that have been improvidently issued based on ownership or control relationships. This section provides for direct Federal enforcement, including notices of violation and cessation orders, if a State fails to take appropriate action. NMA objected to a provision that requires Internet posting of our initial notice that we have reason to believe a State permit may have been improvidently issued. In order to settle this claim, we agreed to propose a regulatory revision at paragraph (a), but we did not agree to remove the Internet posting requirement. The revision at paragraph (a) would provide that the initial notice must be based upon reliable and credible information. Since a finding of improvident issuance can have potentially serious ramifications, it is only fair that the initial notice be based on reliable and credible information.

Upon further consideration, we propose to remove all Internet posting requirements found in the 2000 final rule. These Internet posting requirements can be found at current sections 30 CFR 773.21(c)(2), 773.22(d), 773.23(c)(2), 773.28(d), 843.21(a)(2), 843.21(c)(2), and 843.21(d). We also propose to retain the requirement to post certain *preliminary* decisions “at our office closest to the permit area.” These posting requirements are found at current sections 30 CFR 773.21(c)(2), 773.22(d), 843.21(a)(2), and 843.21(c)(2). We propose to retain the requirement to post certain *final* decisions at our office closest to the permit area (or, in one instance, on AVS). These final decision posting requirements are found at proposed sections 30 CFR 773.23(c)(2), 773.28(d), and 843.21(d).

Our inclusion of the Internet posting requirements in the first instance was

primarily based on comments that we should expand the public’s access to our decisions. *See, e.g.*, 65 FR 79632. While public access to final decisions remains important, we have come to believe that the various Internet posting requirements in the 2000 final rule could be unduly burdensome to regulatory authorities, especially when public notice of final decisions can be accomplished by the less burdensome, conventional method of posting them at our office closest to the permit area. Further, regulatory authorities are already required to enter much of the relevant information into AVS, which is available to the public. Posting *preliminary* findings by any method could likewise become unduly burdensome; further, posting of preliminary findings is of questionable value to the public. For these reasons, we propose to remove all Internet and *preliminary* finding posting requirements, but retain public posting of our final decisions. In terms of information collection burdens on regulatory authorities, we note that we have not yet required the States to implement these posting requirements. Thus, because we propose to eliminate an information collection that never took effect for the States, there is no net change to the information collection burden.

30 CFR 847.11—Criminal Penalties

30 CFR 847.16—Civil Actions for Relief

During the course of litigation over our 2000 final rule, NMA claimed that certain of the rule’s “alternative enforcement” provisions unlawfully abrogate State prosecutorial discretion by making it mandatory for States to seek criminal penalties or institute civil actions for relief upon the occurrence of certain specified conditions. *See* sections 30 CFR 847.11 (criminal penalties), 847.16 (civil actions for relief), and 847.2(c) (requiring State regulatory programs to include criminal penalty and civil action provisions that are no less stringent than the Federal requirements). Upon further reflection, we agree that the regulatory authority—Federal or State—should retain the discretion to evaluate the severity of a violation and ultimately to determine whether referral for alternative enforcement is warranted. As such, and in order to settle NMA’s claim, we propose to amend our regulations at sections 30 CFR 847.11 and 847.16 to remove the mandatory nature of referrals for alternative enforcement. We propose to accomplish this by changing the word “will” to “may” in the operative provisions to underscore that