

30 CFR Part 847

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: December 19, 2003.

Patricia E. Morrison,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR Parts 701, 773, 774, 778, 843, and 847 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

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

2. Amend § 701.5 as follows:

a. Revise the definition of *control* or *controller*.

b. Revise the definition of *own*, *owner*, or *ownership*.

The revised definitions read as follows.

§ 701.5 Definitions.

Control or *controller*, when used in parts 773, 774, and 778 and § 843.21 of this chapter, refers to or means—

(1) A permittee of a surface coal mining operation;

(2) An operator of a surface coal mining operation; or

(3) Any other person who has the ability to determine the manner in which a surface coal mining operation is conducted.

Own, *owner*, or *ownership*, as used in parts 773, 774, and 778 and § 843.21 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, and 16 U.S.C. 1531 *et seq.*

4. In § 773.8, revise paragraph (b)(1) to read as follows:

§ 773.8 General provisions for review of permit application information and entry of information into AVS.

(b) * * *

(1) The information you submit under §§ 778.11 and 778.12(c) of this subchapter.

5. In § 773.9, revise paragraph (a) to read as follows:

§ 773.9 Review of applicant, operator, and ownership and control information.

(a) We, the regulatory authority, will rely upon the information that you, the applicant, submit under § 778.11 of this subchapter, information from AVS, and any other available information, to review your and your operator's business structure and ownership or control relationships.

6. In § 773.10, revise paragraphs (b) and (c) to read as follows:

§ 773.10 Review of permit history.

(b) We will also determine if you, your operator, or your designated controller disclosed under § 778.11(d) of this subchapter have previous mining experience.

(c) If you, your operator, or your designated controller do not have any previous mining experience, we may conduct additional reviews under § 774.11(f) of this subchapter. The purpose of this review will be to determine if someone else with mining experience controls the mining operation.

7. In § 773.12, revise paragraphs (a)(1) and (a)(2), remove paragraphs (a)(3) and (b), and redesignate paragraphs (c), (d) and (e) as paragraphs (b), (c), and (d), respectively, to read as follows:

§ 773.12 Permit eligibility determination.

(a) * * *

(1) You directly own or control has an unabated or uncorrected violation; or

(2) You or your operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited after November 2, 1988.

8. In § 773.14, revise paragraph (b) introductory text to read as follows:

§ 773.14 Eligibility for provisionally issued permits.

(b) We, the regulatory authority, will find you eligible for a provisionally issued permit under this section if you demonstrate that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this section—

9. In § 773.21, revise paragraph (c) to read as follows:

§ 773.21 Initial review and finding requirements for improvidently issued permits.

(c) When we make a preliminary finding under paragraph (a) of this section, we must serve you with a written notice of the preliminary finding, which must be based on reliable, credible, and substantial evidence and establish a *prima facie* case that your permit was improvidently issued.

10. Amend § 773.22 by removing paragraph (d) and redesignating paragraphs (e), (f), (g) and (h) as (d), (e) (f), and (g), respectively.

11. In § 773.23, revise paragraph (c)(2) to read as follows:

§ 773.23 Suspension or rescission requirements for improvidently issued permits.

(c) * * *

(2) Post the notice at our office closest to the permit area.

12. In § 773.26, revise the table in paragraph (a) and add paragraph (e) to read as follows:

§ 773.26 How to challenge an ownership or control listing or finding.

(a) * * *

If the challenge concerns . . .	then you must submit a written explanation to . . .
(1) A pending State or Federal permit application . . .	the regulatory authority with jurisdiction over the application.
(2) Your ownership or control of a surface coal mining operation, and you are not currently seeking a permit . . .	the regulatory authority with jurisdiction over the surface coal mining operation.

(e) At any time, you, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an explanation from the AVS Office as to the reason you are shown in AVS in an ownership or control capacity. Within 14 days of your request, the AVS Office will provide a response describing why you are listed in AVS.

13. In § 773.27, revise paragraph (a) to read as follows:

§ 773.27 Burden of proof for ownership or control challenges.