

only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) A description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

[53 FR 52949, Dec. 29, 1988]

§ 772.15 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made available for public inspection and copying at

the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Sec.

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773.25 Standards for challenging ownership or control links and the status of violations.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*; and Pub. L. 100-34.

SOURCE: 48 FR 44391, Sept. 28, 1983, unless otherwise noted.

§ 773.1 Scope and purpose.

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other

laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

§ 773.5 Definitions.

For purposes of this subchapter:

Applicant/Violator System or *AVS* means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

Federal violation notice means a violation notice issued by OSM or by another agency or instrumentality of the United States.

Owned or controlled and *owns or controls* mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

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

(2) Based on instrument of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to deter-

mine the manner in which that person or another person conducts a surface coal mining operation.

Ownership or control link means any relationship included in the definition of *Owned or controlled* or *Owns or controls* in this section or in the violations review provisions of § 773.15(b) of this part. It includes any relationship presumed to constitute ownership or control under the definition of *Owned or controlled* or *Owns or controls* in this section, unless such presumption has been successfully rebutted under the provisions of §§ 773.24 and 773.25 of this part or under the provisions of part 775 of this chapter and § 773.25.

State violation notice means a violation notice issued by a State regulatory authority or by another agency or instrumentality of State government.

Violation notice means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act; any Federal rule or regulation promulgated pursuant thereto; a State program; or any Federal or State law, rule, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

[53 FR 38890, Oct. 3, 1988 as amended at 53 FR 44145, Nov. 1, 1988; 53 FR 44694, Nov. 4, 1988; 59 FR 54352, Oct. 28, 1994; 62 FR 19458, Apr. 21, 1997]

§ 773.10 Information collection.

(a) The collections of information contained in 30 CFR part 773 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0041. The information will be used by

the regulatory authorities in processing applications. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.*

(b) Public reporting burden for this collection of information is estimated to average four and one-half hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to OSM Information Collection Clearance Officer, Room 640 NC, 1951 Constitution Ave., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029-0041), Washington, DC 20503.

[59 FR 54352, Oct. 28, 1994]

§ 773.11 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the regulatory authority except as provided for in paragraph (b) of this section. A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(b) *Continuation of initial program operations.* (1) If a State program receives final disapproval under part 732 of this chapter, including judicial review of the disapproval, existing surface coal mining and reclamation operations may continue pursuant to the provisions of subchapter B of this chapter and section 502 of the Act until promulgation of a complete Federal program for the State. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State. Permits that lapse

during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

(2) Except for coal preparation plants separately authorized to operate under 30 CFR 785.21(e), a person conducting surface coal mining operations, under a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if—

(i) Not later than 2 months following the effective date of a permanent regulatory program, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after the expiration of 8 months from such effective date in accordance with the provisions of the regulatory program;

(ii) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit; and

(iii) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Act, subchapter B of this chapter, applicable State statutes and regulations, and all terms and conditions of the initial program authorization or permit.

(3) No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

(c) *Continued operations under Federal program permits.* (1) A permit issued by the Director pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the State regulatory authority for a State permit to supersede the Federal permit.

(3) The State regulatory authority may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved

State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall—

- (i) Inform the permittee in writing;
- (ii) Provide the permittee an opportunity for a hearing;
- (iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and
- (iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

(d) *Continued operations under State program permits.* (1) A permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

(2) Immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, this chapter, and the Federal program are not violated. If the Director determines that a permit was granted contrary to the requirements of this Act, the Director shall—

- (i) Inform the permittee in writing;
- (ii) Provide the permittee an opportunity for a hearing;
- (iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and
- (iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

[48 FR 44391, Sept. 28, 1983, as amended at 53 FR 11607, Apr. 7, 1988; 54 FR 13823, Apr. 5, 1989]

§ 773.12 Regulatory coordination with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Co-

ordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*) where Federal and Indian lands covered by that Act are involved.

[52 FR 4262, Feb. 10, 1987]

§ 773.13 Public participation in permit processing.

(a) *Filing and public notice.* (1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under § 774.13, or renewal of a permit under § 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

- (i) The name and business address of the applicant.
- (ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.
- (iii) The location where a copy of the application is available for public inspection.
- (iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.
- (v) If an applicant seeks a permit to mine within 100 feet of the outside

right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with §761.12(d) of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under §785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under §774.13, or renewal of a permit under §774.15 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (d) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the regulatory authority.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under §774.13, or a renewal of a permit under §774.15, the regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to—

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agen-

cies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with section 503(a)(6) or section 504(h) of the Act, or §773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) *Comments and objections on permit applications.* (1) Within a reasonable time established by the regulatory authority, written comments or objections on an application for a permit, significant revision to a permit under §774.13, or renewal of a permit under §774.15 may be submitted to the regulatory authority by public entities notified under paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under §774.13, or renewal of a permit under §774.15 may be submitted to the regulatory authority by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by paragraph (a) of this section.

(3) The regulatory authority shall upon receipt of such written comments or objections—

(i) Transmit a copy of the comments or objections to the applicants; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) *Informal conferences.* (1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a

head of a Federal, State, or local government agency, may request in writing that the regulatory authority hold an informal conference on the application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15. The request shall—

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the regulatory authority no later than 30 days after the last publication of the newspaper advertisement required under paragraph (a) of this section.

(2) Except as provided in paragraph (c)(3) of this section, if an informal conference is requested in accordance with paragraph (c)(1) of this section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the regulatory authority in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal con-

ference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conference held in accordances with this section may be used by the regulatory authority as the public hearing required under § 761.12(d) of this chapter on proposed relocation or closing of public roads.

(d) *Public availability of permit applications*—(1) *General availability*. Except as provided in paragraph (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) *Limited availability*. Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) *Confidentiality*. The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to—

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

§ 773.15 Review of permit applications.

(a) *General.* (1) The regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

(b) *Review of violations.* (1) Based on a review of all reasonably available information concerning violation notices involving either the applicant or any person owned or controlled by the applicant, including information obtained pursuant to §§ 773.22, 773.23, 778.13, and 778.14 of this chapter, the regulatory authority may not issue the permit if any surface coal mining and reclamation operation owned or controlled by the applicant is currently in violation of the Act, any Federal rule or regulation promulgated pursuant thereto, a State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection. In the absence of a

failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to § 843.12 of this chapter or under a Federal or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation where the abatement period for the notice of violation has not yet expired and where, as part of the violation information provided pursuant to § 778.14 of this chapter, the applicant has provided certification that the violation is in the process of being so corrected. This presumption does not apply where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the regulatory authority must require the applicant or any person owned or controlled by the applicant, before the issuance of the permit, to either:

(i) Submit to the regulatory proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the regulatory authority that the applicant, or any person owned or controlled by the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 775.13 of this chapter affirms the violation, then the applicant must, within 30 days of the judicial action, submit the proof required under paragraph (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of a presumption supported by certification under § 778.14 of this chapter that a violation is in the process of being corrected, on the basis of proof submitted under paragraph (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section, must be issued conditionally.

(3) If the regulatory authority makes a finding that the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations

with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit may be issued. Before such a finding becomes final, the applicant or operator must be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 775.11 of this chapter.

(4)(i) Subsequent to October 24, 1992, the prohibitions of paragraph (b) of this section regarding the issuance of a new permit do not apply to any violation that:

- (A) Occurs after that date;
- (B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remaining under a permit:

(1) Issued before September 30, 1994, or any renewals thereof; and

(2) Held by the person making application for the new permit.

(ii) For permits issued under § 785.25 of this chapter, an event or condition will be presumed to be unanticipated for the purposes of this paragraph if it:

- (A) Arose after permit issuance;
- (B) Was related to prior mining; and
- (C) Was not identified in the permit.

(c) *Written findings for permit application approval.* No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

(2) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is—

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to parts 764 and 769 of this chapter, to have an area des-

ignated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to parts 762, 764, and 769 of this chapter or subject to the prohibitions or limitations of §§ 761.11 and 761.12 of this chapter.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(5) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with § 701.11(d), and the applicable performance standards of subchapter B or K of this chapter.

(7) The applicant has paid all reclamation fees from previous and existing operations as required by subchapter R of this chapter.

(8) The applicant has satisfied the applicable requirements of part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of § 816.111(d) or § 817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(11) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic

Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the regulatory authority has determined that no additional protection measures are necessary.

(12) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of §816.106 or §817.106 of this chapter, the site of the operation is a *previously mined area* as defined in §701.5 of this chapter.

(13) For permits to be issued under §785.25 of this chapter, the permit application must contain:

- (i) Lands eligible for remining;
- (ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and
- (iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(d) *Performance bond submittal.* If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of subchapter J of this chapter.

(e) *Final compliance review.* After an application is approved, but before the permit is issued, the regulatory authority must reconsider its decision to approve the application, based on the compliance review required by paragraph (b)(1) of this section in light of any new information submitted under §§ 778.13(k) and 778.14(d) of this chapter.

[48 FR 44391, Sept. 28, 1983, as amended at 52 FR 4262, Feb. 10, 1987; 52 FR 17529, May 8, 1987; 53 FR 38890, Oct. 3, 1988; 54 FR 8991, Mar. 2, 1989; 59 FR 54353, Oct. 28, 1994; 60 FR 58491, Nov. 27, 1995; 62 FR 19458, Apr. 21, 1997]

§ 773.17 Permit conditions.

Each permit issued by the regulatory authority shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation oper-

ations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to subchapter J of this chapter.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the State regulatory authority to—

(1) Have the right of entry provided for in §§ 842.13 and 840.12 of this chapter; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with parts 840 and 842, when the inspection is in response to an alleged violation reported to the regulatory authority by the private person.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from non-compliance with any term or condition of the permit, including, but not limited to—

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the non-compliance.

(f) As applicable, the permittee shall comply with §701.11(d) and subchapter B or K of this chapter for compliance, modification, or abandonment of existing structures.

(g) The operator shall pay all reclamation fees required by subchapter R of this chapter for coal produced under the permit for sale, transfer or use, in the manner required by that subchapter.

(h) Within 30 days after a cessation order is issued under §843.11 of this chapter, or the State program equivalent, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee must either submit to the regulatory authority the following information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the immediately preceding submittal of such information:

(1) Any new information needed to correct or update the information previously submitted to the regulatory authority by the permittee under §778.13(c) of this chapter; or

(2) If not previously submitted, the information required from a permit application by §778.13(c) of this chapter.

[48 FR 44391, Sept. 28, 1983, as amended at 49 FR 27499, July 5, 1984; 54 FR 8991, Mar. 2, 1989; 62 FR 19459, Apr. 21, 1997]

§773.19 Permit issuance and right of renewal.

(a) *Decision.* If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (b) of this section.

(b) *Notification.* The regulatory authority shall issue written notification of the decision to the following persons and entities:

(1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.

(2) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.

(3) If the regulatory authority is a State agency, the local OSM office.

(c) *Permit term.* Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of §778.17 of this chapter are met.

(d) *Right of renewal.* Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with §774.15.

(e) *Initiation of operations.* (1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The regulatory authority may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if—

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the regulatory authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the regulatory authority.

§773.20 Improvidently issued permits: General procedures.

(a) *Permit review.* A regulatory authority which has reason to believe that it improvidently issued a surface coal mining and reclamation permit must review the circumstances under which the permit was issued, using the

criteria in paragraph (b) of this section. When the regulatory authority finds that the permit was improvidently issued, it must comply with paragraph (c) of this section.

(b) *Review criteria.* (1) A regulatory authority must find that a surface coal mining and reclamation permit was improvidently issued if:

(i) Under the violations review criteria of the regulatory program at the time the permit was issued:

(A) The regulatory authority should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(B) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(ii) The violation, penalty, or fee:

(A) Remains unabated or delinquent; and

(B) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule that is being met to the satisfaction of the responsible agency; and

(iii) The permittee or any person owned or controlled by the permittee continues to be responsible for the violation, penalty, or fee.

(2) The provisions § 773.25 of this part apply whenever a regulatory authority makes one of the following determinations:

(i) Whether a violation, penalty, or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, and

(ii) Whether the permittee or any person owned or controlled by the permittee continues to be responsible for the violation, penalty, or fee.

(c) *Remedial measures.* (1) A regulatory authority which, under paragraph (b) of this section, finds that, because of an unabated violation or a delinquent penalty or fee, a permit was improvidently issued must use one or more of the following remedial measures:

(i) Implement, with the cooperation of the responsible agency, the per-

mittee, and persons owned or controlled by the permittee, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(ii) Impose on the permit a condition requiring abatement of the violation or payment of the penalty or fee within a reasonable time;

(iii) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(iv) Rescind the permit.

(2) If the regulatory authority decides to suspend the permit, it must afford at least 30 days written notice to the permittee. If the regulatory authority decides to rescind the permit, it must issue a notice in accordance with § 773.21 of this part. In either case, the permittee must be given the opportunity to request administrative review of the notice under 43 CFR 4.1370 through 4.1370 through 4.1377, where OSM is the regulatory authority, or under the State program equivalent, where a State is the regulatory authority. The regulatory authority's decision will remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with 43 CFR 4.1376 or the State program equivalent.

[62 FR 19459, Apr. 21, 1997]

§ 773.21 Improvidently issued permits: Rescission procedures.

A regulatory authority which, under § 773.20(c)(1)(iv) of this part, elects to rescind an improvidently issued permit must serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under § 773.20(b) of this part and states that:

(a) *Automatic suspension and rescission.* After a specified period of time not to exceed 90 days, the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, consistent with the provisions of § 773.25 of this part, that:

(1) The finding of the regulatory authority under § 773.20(b) of this part was erroneous;

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(2) The violation has been abated, or the penalty or fee paid, to the satisfaction of the responsible agency;

(3) The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule that is being met to the satisfaction of the responsible agency; or

(4) The permittee and all persons owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee.

(b) *Cessation of operations.* After permit suspension or rescission, the permittee must cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority.

[62 FR 19459, Apr. 21, 1997]

§ 773.22 Verification of ownership or control application information.

(a) In accordance with § 773.15(c)(1) of this part, prior to the issuance of a permit, the regulatory authority shall review the information in the application provided pursuant to § 778.13 of this chapter to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the regulatory authority shall compare the information provided in the application with information from other reasonably available sources, including—

(1) Manual data sources within the State in which the regulatory authority exercises jurisdiction, including: (i) The regulatory authority's inspection and enforcement records and (ii) State corporation commission or tax records, to the extent they contain information concerning ownership or control links; and

(2) Automated data sources, including: (i) The regulatory authority's own computer systems and (ii) the Applicant/Violator System.

(b) If it appears from the information provided in the application pursuant to § 778.13(c) through (d) of this chapter that none of the persons identified in the application has had any previous mining experience, the regulatory authority shall inquire of the applicant

and investigate whether any person other than those identified in the application will own or control the operation (as either an operator or other owner or controller).

(c) If, as a result of the review conducted under paragraphs (a) and (b) of this section, the regulatory authority identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of (1) An amendment to the application or (2) a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists. The regulatory authority shall also take action in accordance with the provisions of § 843.23 of this chapter (or the State program equivalent), where appropriate.

(d) Upon completion of the review conducted under this section, the regulatory authority shall promptly enter into or update all ownership or control information on AVS.

[59 FR 54353, Oct. 28, 1994]

§ 773.23 Review of ownership or control and violation information.

(a) Following the verification of ownership or control information pursuant to § 773.22 of this part, the regulatory authority shall review all reasonably available information concerning violation notices and ownership or control links involving the applicant to determine whether the application can be approved under § 773.15(b) of this part. Such information shall include—

(1) With respect to ownership or control links involving the applicant, all information obtained under §§ 773.22 and 778.13 of this chapter; and

(2) With respect to violation notices, all information obtained under § 778.14 of this chapter, information obtained from OSM, including information shown in the AVS, and information from the regulatory authority's own records concerning violation notices.

(b) If the review conducted under paragraph (a) of this section discloses any ownership or control link between

the applicant and any person cited in a violation notice—

(1) The regulatory authority shall so notify the applicant and shall refer the applicant to the agency with jurisdiction over such violation notice; and

(2) The regulatory authority shall not approve the application unless and until it determines, in accordance with the provisions of §§ 773.24 and 773.25 of this part (or the State program equivalent), (i) That all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted, or (ii) that the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of § 773.15(b)(1) of this part (or the State program equivalent).

(c) Following the regulatory authority's decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or following the applicant's withdrawal of the application, the regulatory authority shall promptly enter all relevant information related to such decision or withdrawal into AVS.

[59 FR 54354, Oct. 28, 1994; 59 FR 61656, Dec. 1, 1994]

§ 773.24 Procedures for challenging ownership or control links shown in AVS.

(a)(1) Any applicant or other person shown in AVS in an ownership or control link to any person may challenge such link in accordance with the provisions of paragraphs (b) through (d) of this section and § 773.25 of this part, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the link.

(2) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a Federal violation notice may challenge the status of the violation covered by such notice in accordance with the provisions of paragraphs (b) through (d) of this section and § 773.25 of this part, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the status of the violation.

(3) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a State violation notice may challenge the status of the violation covered by such notice in accordance with the State program equivalents to paragraphs (b) through (d) of this section and § 773.25 of this part for the State that issued the violation notice, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the status of the violation.

(b) Any applicant or other person who wishes to challenge an ownership or control link shown in AVS or the status of a Federal violation, and who is eligible to do so under the provisions of paragraphs (a)(1) or (a)(2) of this section, shall submit a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents, to OSM, addressed to the Chief of the AVS Office, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240.

(c) OSM shall review any information submitted under paragraph (b) of this section and shall make a written decision whether or not the ownership or control link has been shown to be erroneous or has been rebutted and/or whether the violation covered by the notice remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of § 773.15(b)(1) of this part.

(d)(1) If, as a result of the decision reached under paragraph (c) of this section, OSM determines that the ownership or control link has been shown to be erroneous or has been rebutted and/or that the violation covered by the notice has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, OSM shall so notify the applicant or other person and, if an application is pending, the regulatory authority, and shall correct the information in AVS.

(2) If, as a result of the decision reached under paragraph (c) of this section, OSM determines that the ownership or control link has not been shown

to be erroneous and has not been rebutted and that the violation covered by the notice remains outstanding, OSM shall so notify the applicant or other person and, if an application is pending, the regulatory authority, and shall update the information in AVS, if necessary.

(i) OSM shall serve a copy of the decision on the applicant or other person by certified mail, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or of the mail and shall not be deemed incomplete because of a refusal to accept.

(ii) The applicant or other person may appeal OSM's decision to the Department of the Interior's Office of Hearings and Appeals within 30 days of service of the decision in accordance with 43 CFR 4.1380 through 4.1387. OSM's decision shall remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with 43 CFR 4.1386.

[59 FR 54354, Oct. 28, 1994]

§ 773.25 Standards for challenging ownership or control links and the status of violations.

(a) The provisions of this section shall apply whenever a person has and exercises a right, under the provisions of §§ 773.20, 773.21, 773.23, or 773.24 of this part or under the provisions of part 775 of this chapter, to challenge (1) an ownership or control link to any person and/or (2) the status of any violation covered by a notice.

(b) *Agencies responsible.* (1) Except as provided in paragraph (b)(3) of this section—

(i) The regulatory authority before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application.

(ii) The regulatory authority that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit.

(iii) The State regulatory authority for the State that issued a State violation notice shall have responsibility for making decisions with respect to the

ownership or control relationships of the violation.

(iv) The regulatory agency that issued a violation notice, whether State or Federal, shall have responsibility for making decisions concerning the status of the violation covered by such notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of § 773.15(b)(1) of this part.

(2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a Federal violation notice.

(3)(i) With respect to information shown on AVS, the responsibilities referred to in paragraph (b)(1) of this section shall be subject to the plenary authority of OSM to review any State regulatory authority decision regarding an ownership or control link.

(ii) With respect to ownership or control information which has not been entered into AVS by a State and with respect to information shown on AVS relating to the status of a violation, State regulatory authorities' determinations are subject to OSM's program authority oversight under parts 733, 842, and 843 of this chapter.

(c) *Evidentiary standards.* (1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that such link exists, existed during the relevant period, and/or that the violation covered by such notice remains outstanding. Once such a prima facie determination or showing has been made, the person challenging such link or the status of the violation shall have the burden of proving by a preponderance of the evidence, with respect to any relevant time period—

(i) That the facts relied upon by the responsible agency to establish: (A) Ownership or control under the definition of *Owned or controlled* or *Owns or controls* in § 773.5 of this part or (B) a presumption of ownership or control under the definition of *Owned or controlled* or *Owns or controls* in § 773.5 of this part, do not or did not exist;

(ii) That a person subject to a presumption of ownership or control under the definition of *Owned or controlled* or *Owns or controls* in §773.5 of this part, does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted, or

(iii) That the violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of §773.15(b)(1) of this part; *provided* that the existence of the violation at the time it was cited may not be challenged under the provisions §773.24 of this part: (A) By a permittee, unless such challenge is made by the permittee within the context of §§773.20 through 773.21 of this part; (B) by any person who had a prior opportunity to challenge the violation notice and who failed to do so in a timely manner; or (C) by any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

(2) In meeting the burden of proof set forth in paragraph (c)(1) of this section, the person challenging the ownership or control link or the status of the violation shall present probative, reliable, and substantial evidence and any supporting explanatory materials, which may include—

(i) Before the responsible agency—

(A) Affidavits setting forth specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by such owners or controllers; the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or specific facts concerning the status of the violation;

(B) If certified, copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(C) If certified, copies of documents filed with or issued by any State, Municipal, or Federal governmental agency.

(D) An opinion of counsel, when supported by (1) Evidentiary materials; (2) a statement by counsel that he or she is qualified to render the opinion; and (3) a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true.

(ii) Before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of such tribunal.

(d) Following any determination by a State regulatory authority or other State agency, or any decision by an administrative or judicial tribunal reviewing such determination, the State regulatory authority shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the State regulatory authority shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

[59 FR 54355, Oct. 28, 1994; 59 FR 61656, Dec. 1, 1994]

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Sec.

774.1 Scope and purpose.

774.10 Information collection.

774.11 Regulatory authority review of permits.

774.13 Permit revisions.

774.15 Permit renewals.

774.17 Transfer, assignment, or sale of permit rights.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

SOURCE: 48 FR 44395, Sept. 28, 1983, unless otherwise noted.

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; and transfer, assignment, or sale of permit rights.