

## § 774.12

expired, we will enter our finding into AVS.

(2) If you request a hearing, we will enter our finding into AVS only if that finding is upheld on administrative appeal.

(f) At any time, we may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If we identify such a person, we must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. Our written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

(g) After we issue a written preliminary finding under paragraph (f) of this section, we will allow you, the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate your lack of ownership or control. If, after reviewing any information you submit, we are persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, we still find that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a written finding and enter our finding into AVS.

(h) If we identify you as an owner or controller under paragraph (g) of this section, you may challenge the finding using the provisions of §§ 773.25, 773.26, and 773.27 of this subchapter.

[65 FR 79667, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

## § 774.12 Post-permit issuance information requirements for permittees.

(a) Within 30 days after the issuance of a cessation order under § 843.11 of this chapter, or its State regulatory program equivalent, you, the permittee, must provide or update all the information required under § 778.11 of this subchapter.

(b) You do not have to submit information under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

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(c) Within 60 days of any addition, departure, or change in position of any person identified in § 778.11(c) of this subchapter, you must provide—

(1) The information required under § 778.11(d) of this subchapter; and

(2) The date of any departure.

[65 FR 79667, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

## § 774.13 Permit revisions.

(a) *General.* During the term of a permit, the permittee may submit an application to the regulatory authority for a revision of the permit.

(b) *Application requirements and procedures.* the regulatory authority shall establish—

(1) A time period within which the regulatory authority will approve or disapprove an application for a permit revision; and

(2) Guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of this subchapter, including notice, public participation, and notice of decision requirements of §§ 773.6, 773.19(b) (1) and (3), and 778.21, shall apply. Such requirements and procedures shall apply at a minimum to all significant permit revisions.

(c) *Criteria for approval.* No application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under § 773.15 which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

(d) *Request to change permit boundary.* Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

[48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

## § 774.15 Permit renewals.

(a) *General.* A valid permit, issued pursuant to an approved regulatory program, 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.

(b) *Application requirements and procedures.* (1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum—

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(ii) Evidence that a liability insurance policy or adequate self-insurance under §800.60 of this chapter will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to subchapter J of this chapter;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by §778.21 of this chapter; and

(v) Additional revised or updated information required by the regulatory authority.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in §§ 773.6 and 773.19(b) of this chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of §774.13.

(c) *Approval process*—(1) *Criteria for approval.* The regulatory authority shall approve a complete and accurate application for permit renewal, unless it finds, in writing that—

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operations are not in compliance with the environmental

protection standards of the Act and the regulatory program;

(iii) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the Act and the regulatory program on existing permit areas;

(iv) The operator has not provided evidence of having liability insurance or self-insurance as required in §800.60 of this chapter;

(v) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the regulatory authority might require pursuant to subchapter J of this chapter; or

(vi) Additional revised or updated information required by the regulatory authority has not been provided by the applicant.

(2) *Burden of proof.* In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(3) *Alluvial valley floor variance.* If the surface coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and §785.19 of this chapter, because the permittee complied with the exceptions in the proviso to section 510(b)(5) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit shall not be subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and §785.19 of this chapter.

(d) *Renewal term.* Any permit renewal shall be for a term not to exceed the period of the original permit established under §773.19.

(e) *Notice of decision.* The regulatory authority shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM if OSM is not the regulatory authority.

(f) *Administrative and judicial review.* Any person having an interest which is

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or may be adversely affected by the decision of the regulatory authority shall have the right to administrative and judicial review set forth in part 775 of this chapter.

[48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

### § 774.17 Transfer, assignment, or sale of permit rights.

(a) *General.* No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority. At its discretion, the regulatory authority may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the regulatory authority that sufficient bond coverage will remain in place.

(b) *Application requirements.* An applicant for approval of the transfer, assignment, or sale of permit rights shall—

(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including—

(i) The name and address of the existing permittee and permit number or other identifier;

(ii) A brief description of the proposed action requiring approval; and

(iii) The legal, financial, compliance, and related information required by part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as re-

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quired under subchapter J of this chapter.

(c) *Public participation.* Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) *Criteria for approval.* The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor—

(1) Is eligible to receive a permit in accordance with §§ 773.12 and 773.14 of this chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by subchapter J of this chapter; and

(3) Meets any other requirements specified by the regulatory authority.

(e) *Notification.* (1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.

(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) *Continued operation under existing permit.* The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

[48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000; 72 FR 68030, Dec. 3, 2007]

## PART 775—ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

Sec.

775.1 Scope and purpose.

775.11 Administrative review.