

This document has been
Rescinded and is located
in our **Archive** files.
Scroll down the page to read
document.

For Active files, visit the
[Active Directives](#) website.



**U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM**

Subject Number:

INE- 2

Transmittal Number:

688

Date:

SEP 3 1991

Subject: Ownership and Control Information Update After Receipt of a Cessation Order

Approval:

Title:

Director

1. Purpose. This directive establishes policy and procedures for the implementation of the ownership and control information update rule for Federal programs and Indian lands programs and where the Office of Surface Mining Reclamation and Enforcement (OSM) is acting in its oversight capacity in primacy States.

2. Summary. This directive provides policy and procedural guidelines needed to implement those requirements of the ownership and control information update rule which apply whenever a permittee is issued a cessation order.

3. Definitions. None.

4. Policy/Procedures.

a. Background. OSM published the ownership and control information update rule on March 2, 1989. The rule took effect April 3, 1989. The rule amends the following sections of the Federal rules:

(1) 30 CFR 773.17(i), which requires, as a permit condition, that permittees submit ownership and control information within 30 days after having been issued a cessation order;

(2) 30 CFR 778.13(c) and (d), which refer to the identification of owners and controllers and affiliates; and

(3) 30 CFR 843.11(g), which requires OSM to notify persons identified as owners or controllers that a cessation order has been issued to the Federal permittee and that they have been identified as an owner or controller of that entity.

The primary purpose of the rule is to assist OSM and the State regulatory authorities achieve compliance with the Surface Mining Control and Reclamation Act of 1977 (the Act) by assuring that those in violation of the Act and their owners or controllers are not issued future permits to engage in surface coal mining operations. The rule imposes several new requirements affecting all permits to conduct surface coal mining and reclamation operations that are issued under a Federal program or Indian lands program. One of the new provisions under 30 CFR 773.17(i) requires that violators who are issued a cessation order submit

to OSM, within 30 days after issuance of such order, updated ownership and control information, current to the date of issuance of the cessation order. The rule directly applies this condition to permits issued prior to April 3, 1989. This condition applies when a cessation order is under appeal pursuant to section 525(a) or 526(a) of the Act, but not when temporary relief of the violation has been granted under section 525(c) or 526(c) of the Act and remains in effect.

Permits issued under a Federal program or Indian lands program on or after April 3, 1989, will contain the new condition in writing. Permits which were issued prior to this date contain this requirement by operation of law. The updated ownership and control information received from the permittee will be entered into the Applicant/Violator System (AVS). Further, such information will be evaluated in accordance with the provisions of 30 CFR 774.17 to determine whether a transfer, assignment, or sale of permit rights has occurred by change in ownership or control where OSM approval has not been obtained.

The updated information will also be used to inform any owners or controllers of a violator that they will be blocked from receiving future permits until the underlying cessation order has been abated and all civil penalties (and related charges) associated with the cessation order have been paid. The rule also specifies that OSM will take appropriate enforcement action in situations where a violator, by not submitting the required information, fails to comply with the new permit condition.

State regulatory authorities have been notified of the need to amend their State programs to be no less effective than the Federal regulations. Once a State has amended its program, OSM will enforce the State counterpart to 30 CFR 773.17(i) in its oversight capacity.

b. Policy. It is OSM policy to ensure that:

(1) whenever an inspector issues a cessation order to a Federal permittee, the inspector, using the statement specified under section 4.c.(1)(a) of this directive, shall concurrently notify the violator of the obligation to submit the required updated ownership and control information;

(2) whenever an inspector issues a cessation order to a permittee in a primacy State which has adopted the requirements of the ownership and control information update rule as a formal part of its approved program, the inspector shall notify the violator in writing of the requirement to submit updated ownership and control information directly to the State regulatory authority in accordance with the State equivalent to 30 CFR Parts 773 and 843 using the statement specified under section 4.c.(1)(a) of this directive as the guideline.

(3) owners and controllers of violators are informed by OSM, or the State regulatory authority when appropriate, that they will be blocked from the issuance of new permits until such time as the underlying violations specified in the cessation order are abated, and all associated civil penalties (and related charges) have been paid;

(4) permits are issued and denied based on the most current information concerning the ownership and control of the applicant, and compliance information about the applicant and entities related to the applicant through ownership or control;

(5) permits are denied and appropriate enforcement action is taken in situations where a permittee fails to submit the required updated ownership and control information;

(6) persons identified as owners or controllers of violators are notified of the identification, and are provided an opportunity to respond to such information; and

(7) if the violator is a corporation, persons identified as owners and controllers are notified that they may be liable for individual civil penalties if the violation underlying the cessation order is not abated.

(8) Where States have adopted the Ownership and Control Information Update rule, States implement procedures no less effective than the rule.

c. Responsibilities.

(1) Field Offices are responsible for:

(a) informing permittees and their owners and controllers issued Federal cessation orders where OSM is the regulatory authority that they must submit updated ownership and control information or notification that there has been no change since the immediately preceding submittal of such information,

(b) informing permittees issued Federal cessation orders in an approved program State which has adopted the ownership and control update rule that they must submit the updated ownership and control information to the appropriate State regulatory authority,

(c) forwarding to the appropriate Field Permitting Unit a copy of each cessation order issued under a Federal program or Indian lands program, indicating the expiration date for the 30-day deadline by which violators must submit the updated information to the Field Permitting Unit,

(d) forwarding to the appropriate State regulatory authority under an approved State program, a copy of each Federal cessation order issued, indicating the expiration date for the 30-day deadline by which violators must submit the updated information to the State regulatory authority when the State has adopted the ownership and control update rule,

(e) when no updated information is received from the violator after issuance of a failure-to-abate cessation order for failure to submit the information where OSM is the regulatory authority, referring the case file to the Office of the Solicitor for alternative enforcement action if alternative enforcement is appropriate in accordance with the provisions of Directive INE-30, "Alternative Enforcement Referrals for Criminal Penalties, Individual Civil Penalties, and Injunctive Relief."

(2) Field Permitting Units are responsible for:

(a) tracking deadlines for violators where OSM is the regulatory authority to submit updated ownership and control information,

(b) upon receipt of updated information, verifying the information, and ascertain whether a transfer, sale, or assignment may have occurred without OSM approval,

(c) notifying the Field Office that issued the cessation order that the information has been received, and when appropriate, whether an unapproved transfer, sale, or assignment of permit rights may have occurred,

(d) inputting the new ownership and control information into the AVS, and

(e) notifying the appropriate Field Office for further disposition when no information is submitted within the prescribed deadline, and updating the AVS to block violators from receiving future permits until the updated information has been received and associated penalties have been paid or entered into an OSM approved payment plan.

d. Procedures. The following procedures are to be implemented by Field Permitting Units, Field Offices, and their inspectors, to meet the ownership and control information update requirements of revised 30 CFR Parts 773, 778, and 843.

(1) Issuance of Cessation Orders.

(a) Upon issuance of a cessation order under a Federal program or Indian lands program, inspectors shall add the following statement on the cessation order form IE-157A (12/80):

NOTICE: By (specify 30-day deadline) the permittee shall submit to (specify appropriate Field Permitting Unit or State equivalent if enforcing a State program) the ownership and control update information required under (specify 30 CFR 773.17(i) and 778.13(c) or State program equivalent). Failure to comply with this requirement will result in appropriate enforcement action.

(b) Inspectors shall, concurrent with the issuance of a cessation order, serve a copy of the attached Notice of Requirement to Update Ownership and Control Information (Appendix 1).

(c) Inspectors shall promptly forward to the appropriate Field Permitting Unit a copy of each cessation order issued under a Federal program or Indian lands program on or after April 3, 1989, indicating for each the expiration date for the 30-day deadline by which the violator must submit the required information to the Field Permitting Unit.

(d) Upon issuance of a Federal cessation order to a permittee under a State program, inspectors shall promptly notify the State regulatory authority in writing of the issuance of the cessation order and provide the State a copy of the cessation order. Field Offices shall monitor State actions through oversight to ensure that the State regulatory authority applies its procedures to require the permittee to submit the updated ownership and control information in accordance with the State equivalents to 30 CFR Parts 773 and 843. If the State regulatory authority fails to apply the procedures set forth in its State program, the Field Office shall take action in accordance with Directive INE-35, "Ten-Day Notices." Field Offices shall also monitor State actions to ensure that State regulatory authorities implement all other AVS update requirements and applicable enforcement actions as may be required by their programs. The provisions of sections 4.d.(2) and (3) of this directive may serve as guidance for oversight purposes.

(2) Receipt of Updated Ownership and Control Information.

(a) The Field Permitting Unit shall be responsible for tracking deadlines for violators to submit

updated ownership and control information.

(b) When ownership and control information is received, the Field Permitting Unit shall notify the Field Office of the information update receipt, and shall:

1. compare the new ownership and control information with the information contained in the AVS. If the Field Permitting Unit has reason to doubt the information provided, it may refer to the appropriate Secretary of State, corporation commission, or other information sources to verify the status of an entity's owners and controllers;

2. review the updated information to ascertain whether a transfer, assignment, or sale of permit rights may have occurred without OSM approval, and if so, inform the Field Office of the findings in order that they may issue a notice of violation and/or cessation order for such unapproved transfer, sale, or assignment if appropriate, and take other appropriate steps to bring the permittee into compliance with 30 CFR 774.17; and

3. enter the new ownership and control information into the AVS.

(c) Pursuant to 30 CFR 843.11, within 60 days of the issuance of a cessation order, but not prior to the 30-day deadline allowed for the violator to submit the updated information, the Field Office should ascertain whether the violations underlying the cessation order have been abated. If not, the Field Office, using the letter format provided in Appendix 2, shall notify all owners and controllers of record, as well as those persons identified in the updated information submitted by the violator, that a cessation order has been issued to an entity with which they have been linked. If the violation has been abated, the Field Office shall issue the letter provided in Appendix 3 to those identified in the updated information.

(d) Service of letters provided in the Appendix shall be performed by personal delivery, certified mail or any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure.

(3) Non-receipt of Updated Ownership and Control Information.

(a) When the required updated ownership and control information is not received from a violator within the prescribed 30-day period, the Field Permitting Unit shall notify the issuing Field Office of the violator's failure to submit the required information.

(b) The Field Office shall subsequently notify the owners and controllers of the violator as identified from the permit application or other information (i.e., AVS), within 60 days of the issuance of the cessation order but not prior to the 30 day deadline allowed for the violator to submit the updated information, that the cessation order has been issued (Appendix 2).

(c) Prior to initiating any further enforcement action the Field Office shall confer with the Office of the Solicitor to ascertain whether temporary relief has been granted under either administrative or judicial review on the cessation order. If temporary relief has been granted the Field Office Director shall request that the Office of the Solicitor subsequently notify the Field Office when a final decision has been rendered, and the results of the hearing. Once temporary relief expires the Field Office shall proceed under paragraph (d) below.

(d) If temporary relief has not been granted, or has expired, and the updated ownership and control information has not been received by the 30-day deadline (as modified when necessary due to temporary relief), the Field Office and Field Permitting Unit shall take the following steps:

1. If the permittee has not abated the violation underlying the cessation order, the Field Office shall note in the case file that the required information was not received, and refer the case file to the Office of the Solicitor for alternative enforcement action in accordance with Directive INE-30, "Alternative Enforcement Referrals for Criminal Penalties, Individual Civil Penalties, and Injunctive Relief," and shall issue a notice of violation for its failure to submit the updated information on ownership and control as provided for in 4.d.(3)(d)2. of this directive;

2. If the permittee has abated the violation underlying the cessation order, the Field Office shall terminate the cessation order and issue a notice of violation. The notice of violation shall cite the violator's failure to submit the updated information on ownership and control by the 30-day deadline specified under the prior cessation order, and require the entity to do so in accordance with 30 CFR 773.17(i) and the condition of its permit. The notice of violation shall provide a 15-day period beyond the expiration of the 30-day expiration date specified in the cessation order for the permittee to submit the information. The inspector shall forward a copy of the notice of violation to the appropriate Field Permitting Unit;

3. If the updated information is received by the end of the 15-day period the Field Permitting Unit shall:

a. notify the issuing Field Office that the information has been received; and

b. implement the procedures specified in section 4.d.(2)(b)1. through 3. of this directive.

4. Upon notification by the Field Permitting Unit of receipt of the updated information the Field Office shall issue the notice set forth in Appendix 3 to any person who has been identified by the updated information as an owner or controller.

5. If no information is received from the violator by the end of the 15-day period, the Field Permitting Unit shall alert the issuing Field Office which, in turn, shall issue to the violator an additional failure-to-abate cessation order and complete the requirements set forth in section 4.d.(1) of this directive. The failure-to-abate cessation order shall cite the violator for failure to submit the required updated information as specified in the notice of violation. If the violator does not submit the required ownership and control information within 30 days after the additional cessation order has been issued it shall be noted in the case file and submitted to the Office of the Solicitor for alternative enforcement if alternative enforcement is appropriate in accordance with the provisions of Directive INE-30 cited above. No further enforcement actions with respect to the information collection violation shall be taken pending solicitor determination. The issuing Field Office shall request that the Field Permitting Unit update the AVS to block the violator and its owners and controllers of record from receiving new permits until such time as the updated information is submitted (so as to allow the cessation order to be terminated) and all civil penalties and related charges associated with the cessation order have been paid.

5. Effect on Other Documents. This directive supersedes Temporary Directive 89-20, Transmittal Number 538, dated April 19, 1989, and Change Notice #1 to Temporary Directive 89-20, Transmittal Number 606, dated April 3, 1990.

6. References.

a. 30 CFR 773.17, 774.17, 778.13(a)-(d), 843.11, and 845.15(b), (54 FR 8982, March 2, 1989).

b. Directive INE-30, "Alternative Enforcement Referrals for Criminal Penalties, and Injunctive Relief," dated March 1, 1990.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Inspection and Enforcement,
Commercial (202) 208-2550, FTS 268-2550.

9. Keywords. Permits, ownership, control, information, update,
cessation order.

10. List of Appendices.

Appendix 1 Notice of Requirement to Update Ownership and
Control Information

Appendix 2 Notification of Ownership and Control
Identification

Appendix 3 Notice to Newly Identified Owners and
Controllers Informing Them of Identification
and Potential Civil Penalties

Appendix 1

-IMPORTANT-

Notice of Requirement to Update Ownership and Control Information

Any failure of a recipient of a cessation order to comply with the regulations specified in this notice will result in appropriate enforcement action. Revised Federal regulations (30 CFR 773.17(i)) require that within 30 days after receiving a cessation order the permittee shall submit to the regulatory authority in writing, at the address provided below, the following ownership and control information, whichever applies:

- 1) If your permit was issued before April 3, 1989, submit the ownership and control information required of applicants pursuant to the current provisions of 30 CFR 778.13(c); or
- 2) If your permit was issued after April 3, 1989;
 - (a) submit any information needed to correct or update the ownership and control information previously submitted pursuant to revised 30 CFR 778.13(c); or
 - (b) if there has been no change to the ownership and control information since that information was originally submitted with your permit application, submit a written statement to this effect.

The above information-updating obligation applies even if the cessation order is under appeal pursuant to section 525(a) or 526(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act). However, it does not apply where temporary relief from the cessation order is granted and remains in effect pursuant to 525(c) or 526(c) of the Act.

Prescribed formats for submitting the required ownership and control update information are available from the OSM Field Office which issued the violation. Send all information updates to OSM at the following address:

(Insert Knoxville/Denver Permitting Unit address/telephone no.)

Appendix 2

Notification of Ownership and Control Identification

(Name)

(Address)

Dear _____:

On (date) , the Office of Surface Mining Reclamation and Enforcement (OSM) issued Cessation Order No. _____ to (permittee name) , Permit No. _____.

Whenever a Federal permittee receives a cessation order, the permittee is required by the Federal rules under 30 CFR 773.17(i), to submit to OSM updated ownership and control information. The Federal rules at 30 CFR 773.5 define those relationships which are deemed or presumed to constitute ownership and control between persons and surface coal mining operations. Based on the information provided by the above-named permittee, you have been identified as a(n) (title) of this entity, which means that you are deemed or presumed to be an owner or controller of the entity and the surface mining operations controlled by this entity within the terms of 30 CFR 773.5.

In accordance with 30 CFR 773.15(b), all persons identified as owners or controllers of this permittee will be blocked from the issuance of new permits as long as the above cessation order remains unabated and any associated civil penalties remain unpaid. Since you have been identified as an owner or controller of an entity with an outstanding cessation order and/or civil penalty, your name will be entered into OSM's Applicant/Violator System (AVS) as being linked to a violator. That computer system will be used by OSM and State regulatory authorities as an aid to block the approval of future permits requested by you or any entity which is linked to you through ownership and control unless you provide information to refute or rebut our determination within 30 days of receipt of this letter. Otherwise, in order to avoid your future permits from being blocked, the cessation order referred to above must be abated and all associated civil penalties paid, or abatement plans and payment schedules must be entered into and approved by OSM. In addition, all interest, penalties, fees and charges, other costs of collection which are assessable pursuant to 31 U.S.C. section 3717, or other relevant statutes or regulations and any litigation costs added pursuant to court orders and/or statutes must also be paid, or included in an OSM approved payment plan if one has been executed for payment of the civil penalties. (Immediate payment of the civil penalty and related charges is not required if you are in bankruptcy and the automatic stay is in effect).

If the above-named permittee is incorporated, this letter further serves to notify you that you may be liable for the assessment of individual civil penalties under section 518(f) of the Surface Mining Control and Reclamation Act of 1977, and 30 CFR 846 if the cessation order remains unabated.

If you believe that the information provided by the permittee concerning you is incorrect; if you have information which demonstrates that you are not an owner or controller of the permittee within the provisions of 30 CFR 773.5; or if you wish to make arrangements to abate the violation(s) and/or pay the civil penalties, please contact _____ at _____ (telephone no.) _____.

Sincerely,

(Field Office)
(address)

Appendix 3

Notice to Newly Identified Owners and Controllers Informing Them
of Identification and Potential Civil Penalties

(Name)
(Address)

Dear _____:

The Office of Surface Mining Reclamation and Enforcement (OSM) issued Cessation Order No. _____ to (permittee name), Permit No. _____ on (date).

Whenever a Federal permittee receives a cessation order, the permittee is required by the Federal rules under 30 CFR 773.17(i), to submit to OSM updated ownership and control information. The Federal rules at 30 CFR 773.5 define those relationships which are deemed or presumed to constitute ownership and control between persons and surface coal mining operations. Based on the information provided by the above-named permittee, you have been identified as a(n) (title) of this entity which means that you are deemed or presumed to be an owner or controller of the entity and the surface coal mining operation controlled by the entity within the terms of 30 CFR 773.5.

While the cessation order has been terminated, a civil penalty of \$(dollar amount of penalty) has been assessed and remains outstanding against the permittee on the cessation order referred to above. In accordance with 30 CFR 773.15(b) all persons identified as owners or controllers of this permittee will be blocked from the issuance of future permits until this civil penalty has been paid, or a payment plan has been entered into and approved by OSM. In addition, all interest, penalties, fees and charges, other costs of collection which are assessable pursuant to 31 U.S.C section 3717, or other relevant statutes or regulations and any litigation costs added pursuant to court orders and/or statutes must also be paid, or included in an OSM approved payment plan. (Immediate payment of the civil penalty and related charges is not required if you are in bankruptcy and the automatic stay is in effect).

Since you have been identified as an owner or controller of an entity with an outstanding civil penalty your name will be entered into OSM's Applicant/Violator System (AVS) as a person linked to a surface coal mining operation which is in violation of the Surface Mining Control and Reclamation Act of 1977. The computer system will be used by OSM and State regulatory authorities as an aid to block the approval of future permits

requested by you or any entity which is linked to you through ownership and control unless you provide information to refute or rebut our determination within 30 days of receipt of this letter. Otherwise, in order to avoid the denial of future permits, the civil penalties must be paid or a payment plan must be entered into with OSM.

If you believe that the information provided by the permittee concerning you is incorrect; if you have information which demonstrates that you are not an owner or controller of the permittee within the provisions of 30 CFR 773.5; or if you wish to make arrangements to pay the civil penalty, you may contact _____ at _____ (telephone no.) _____.

Sincerely,

(Field Office)
(Address)
