

Applicant/Violator System Office

System Advisory Memorandum



SAM # 4 DATE: November 4, 2008

Subject: TRANSFER, ASSIGNMENT, or SALE of PERMIT RIGHTS

This System Advisory Memorandum discusses the changes in the Federal regulations pertaining to transfer, assignment, or sale of permit rights and the treatment of this information in the Applicant/Violator System (AVS). This SAM supersedes previous SAM # 23, "Transfer, Assignment, or Sale of Permit Rights," dated September 9, 2004.

Why is this guidance necessary?

On December 3, 2007, we, the Office of Surface Mining Reclamation and Enforcement, published final rules which, in part, revised our rules concerning transfer, assignment, or sale of permit rights. See 72 FR 68000. In the previous SAM on this subject, we adopted an interim policy regarding transfer, assignment, or sale of permit rights. We said the interpretation of the applicability of our rules on transfer, assignment, or sale of permit rights and related rules as presented in SAM # 23 would stand until final rules revising the current regulatory provisions under 30 CFR 774.17 were adopted.

This SAM briefly discusses the effects of our rule changes with respect to transfer, assignment, or sale of permit rights. Its primary purpose is to describe any procedural changes in States' use of AVS pertaining to this subject.

What did we change in the 2007 final rule?

The 2007 final rule amends our regulatory definition of *transfer, assignment, or sale of permit rights* to mean "a change of a permittee." This amendment represents a significant change from the previous definition. We removed regulatory language citing specific applicability to a change in ownership "in any person's right to conduct surface coal mining operations under a permit" and removes the language "or other effective control" in this same circumstance. As a reminder to SAM readers, both *permittee* and *person* are defined terms in our regulatory program.

We also amended our regulatory provisions concerning transfer, assignment, or sale of permit rights at 30 CFR 774.17. The 2007 final rule clarifies the conditions under which a prospective successor in interest may continue mining operations during the pendency of an application, including the discretion of the regulatory authority over whether operations may continue. It clarifies that the entity desiring to be the new permittee is only a "prospective" successor in interest and not an actual successor in interest until approved by the regulatory authority. In addition, a regulatory authority

may approve a transfer, assignment, or sale of permit rights but before any approval is granted, a prospective successor in interest must be permit eligible under 30 CFR 773.12 or 30 CFR 773.14. The requirement for permit eligibility under a transfer, assignment, or sale of permit rights is unchanged from previous regulatory requirements.

The information provided in this SAM does not interfere with a State's interpretation as to who is required to submit an application for a transfer, assignment, or sale of permit rights or under what circumstances an application for a transfer, assignment, or sale of permit rights may be required.

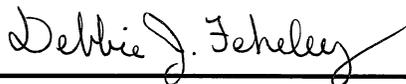
How do the changes affect how information concerning transfer, assignment, or sale of permit rights is treated in AVS?

The 2007 rule changes have no effect on AVS operation to create an application record, evaluate the application, create a permit record, and maintain these data for a permitting action involving a transfer, assignment, or sale of permit rights. Our AVS Users Guide provides the technical procedures for entering, updating, and maintaining these data and records. The AVS Users Guide is accessible on-line at our AVS Office web site at <http://www.avs.osmre.gov>.

Where can I obtain more information on Transfer, Assignment, or Sale of Permit Rights?

For additional information on our rule changes concerning transfer, assignment, or sale of permit rights, we encourage those interested to obtain the *Federal Register* notice at 72 FR 68000, December 3, 2007.

If you have questions regarding the policies and procedures for AVS operation to process applications for transfer, assignment, or sale of permit rights and maintain all related information, please contact your User Assistance Liaison at 1.800.643.9748.

Signed: 

**Debbie J. Feheley, Chief,
Applicant/Violator System Office**