

## § 774.17

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.

(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 required 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 per-

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mittee 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 773.15 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]

## PART 775—ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

Sec.

775.1 Scope and purpose.

775.11 Administrative review.

775.13 Judicial review.

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

SOURCE: 48 FR 44397, Sept. 28, 1983, unless otherwise noted.

### § 775.1 Scope and purpose.

This part provides requirements for administrative and judicial review of decisions on permits.

### § 775.11 Administrative review.

(a) *General.* Within 30 days after an applicant or permittee is notified of

the decision of the regulatory authority concerning an application for approval of exploration required under part 772 of this chapter, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this section.

(b) *Administrative hearings under State programs.* (1) The regulatory authority shall start the administrative hearing within 30 days of such request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under § 773.6(c) shall either preside at the hearing or participate in the decision following the hearing or administrative appeal.

(2) The regulatory authority may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if—

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(iii) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the regulatory authority except that continuation under an existing permit may be allowed where the operation has a valid permit issued under section 510 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, in-

cluding, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority.

(c) *Administrative hearings under Federal programs and Federal lands programs.* All hearings, under a Federal program for a State or a Federal lands program except as may be modified by a cooperative agreement pursuant to part 745 of this chapter, on an application for approval of exploration, a permit for surface coal mining and reclamation operations, permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights shall be of record and governed by 5 U.S.C. 554 and 43 CFR part 4.

[48 FR 44397, Sept. 23, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

#### § 775.13 Judicial review.

(a) *General.* Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in paragraph (b) or (c) of this section if—

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to § 775.11 of this chapter; or

(2) Either the regulatory authority or the hearing authority for administrative review under §775.11 of this chapter fails to act within applicable time limits specified in the Act, this chapter, or the regulatory program.

(b) *Judicial review under State programs.* The action of the hearing authority identified in paragraph (a) of this section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

(c) *Judicial review under Federal programs and Federal lands programs.* The action of the hearing authority identified in paragraph (a) of this section is subject to judicial review by the U.S. District Court for the district where the coal exploration or surface coal mining and reclamation operation is or would be located, except for judicial review of State regulatory authority actions in a State court of competent jurisdiction as may be provided for in a cooperative agreement, in the time and manner provided for in section 526 (a)(2), (b) and (e) of the Act. The availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

## PART 777—GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

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AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44398, Sept. 28, 1983, unless otherwise noted.

### §777.1 Scope.

This part provides minimum requirements concerning the general content for permit applications under a State or Federal program.

### § 777.10 Information collection.

The information collection requirements contained in part 777 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0032. The information is being collected to meet the requirements of sections 507, 508, and 510(b) of the Act. It provides general requirements for permit application format and contents. The obligation to respond is mandatory.

### § 777.11 Format and contents.

(a) An application shall—

(1) Contain current information, as required by this subchapter;

(2) Be clear and concise; and

(3) Be filed in the format required by the regulatory authority.

(b) If used in the application, referenced materials shall either be provided to the regulatory authority by the applicant or be readily available to the regulatory authority. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(c) Applications for permits; revisions; renewals; or transfers, sales or assignments of permit rights shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

### § 777.13 Reporting of technical data.

(a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

### § 777.14 Maps and plans: General requirements.

(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and