

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.

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, including, 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. 28, 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

Sec.

777.1 Scope.

777.10 Information collection.

777.11 Format and contents.

777.13 Reporting of technical data.

777.14 Maps and plans: General requirements.

777.15 Completeness.

777.17 Permit fees.

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

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

EDITORIAL NOTE: At 82 FR 54947, Nov. 17, 2017, as required by the Congressional Review Act and Public Law 115-5, the Office of Surface Mining Reclamation and Enforcement removed all amendments to part 777 made effective on Jan. 19, 2017, at 81 FR 93326-93327, Dec. 20, 2016.

§ 777.1 Scope.

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

[48 FR 44398, Sept. 28, 1983, as amended at 81 FR 93326, Dec. 20, 2016; 82 FR 54947, Nov. 17, 2017]

§ 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.